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COMPILED STATUTES OF MONTANA,

ENACTED AT THE

REGULAR SESSION

OF THE

Fifteenth Legislative Assembly of Montana

EMBRACING

The Laws of a General and Permanent Nature, in Force
at the Expiration of the Fifteenth Regular
Session of the Legislative Assembly

—ALSO—

SPECIAL LAWS ENACTED AT SAID SESSION,

TO WHICH ARE PREFIXED

The Declaration of Independence, The Constitution of the
United States and Amendments thereto, Provisions of
the Revised Statutes of the United States common to all Territories, and those Particularly
Relating to Montana, and Session Laws
of the United States Relating to
Montana Enacted Subsequent
to the Revision

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ERRATA IN COMPILED STATUTES OF MONTANA

Page 77, Sec. 74, last line, after the word [illegible] read [illegible] instead of [illegible].
Page 121 is erroneously printed *21*
Page 18 , Sec. 464 is erroneously printed [illegible]
Page 183, Sec. 450, line 1, for *in* read [illegible]
Page 268, in index to Sec. 862 omit the word *or* before [illegible]
Page 312, Sec. 154, line 17, after the word *on* read [illegible]
Page 330, Sec. 220, line 6, after the word *person* read [illegible] instead of [illegible]
Page 337, Sec. 240, line 5, after the word *the* read *appointment*
Page 340, Sec. 263, line 8, after the word [illegible] read [illegible]
Page 343, Sec. 282, last line, first word read *in*
Page 349, Sec. 301, line 2, after the word [illegible] read [illegible]
Page 411, in index to Sec. 44 after the word *notified* read [illegible]
Page 423, Sec. 103, line 2, after the word [illegible] read [illegible]
Page 423, Sec. 103, line 3, after the word [illegible] read *person*
Page 423, Sec. 103, line 4, after the word [illegible] read *sufficient*
Page 427, in index to Sec. 140 after the word *common* read [illegible]
Page 440, Sec. 244, line 6, first word read [illegible]
Page 482, Sec. 430, line 9, after the word *the* read [illegible]
Page 483, Sec. 431, line 14, read [illegible], instead of *655*
Page 486, Sec. 461, line 8, first word read *violation*
Page 532, Sec. 120, line 5, after the word *any* read *lawful*
Page 539, Sec. 145, line 5, after the word *in* read *a sum* instead of [illegible]
Page 572, Sec. 242, last line, after the word *common* read *prostitute*
Page 582, Sec. 277, marginal note, instead of [illegible] read *306*
Page 625, Sec. 118, line 1, after the word *record* read *of all* instead of [illegible]
Page 653, Sec. 229, first line, after the word *or* read *assignment*
Page 655, in index to Sec. 274, first word read *mortgage* instead of [illegible]
Page 667, in index to Sec. 306 after the word *for* read *penitentiary*
Page 723, in index to Sec. 457, first word read *stockholders*
Page 724, in index to Sec. 479, after the word *have* read *right*
Page 727, Sec. 454, line 1, after the word *shall* insert *have*
Page 731, Sec. 469, line 11, first word read *meaning* instead of [illegible]
Page 767, Sec. 505, line 9, first word read *certificate*
Page 777, Sec. 586, last line, first word read [illegible]
Page 786, Sec. 604, line 10, omit the word *the* before [illegible]
Page 807, Chapter XXXX, erroneously printed [illegible]
Page 827, Sec. 714, line 27, after the word *shall* read *be* instead of [illegible]
Page 857, Sec. 802, last line, first word read *shall*
Page 869, Chapter XLIV, erroneously printed [illegible]
Page 871, in index to Sec. 856, first word read *Sheriff* instead of *Sheriff*
Page 872, Sec. 849, line 2, after the word *organized* read *for*
Page 873, Sec. 856, line 2, after the word *and* read *deputies* instead of [illegible]
Page 879, Sec. 886, last line, first word read *such*
Page 888, Sec. 922, line 12, after the word *the* read [illegible]
Page 901, Sec. 940, line 14, after the word *the* read [illegible] instead of [illegible]
Page 902, Sec. 951, line 6, after the word *conveyance* read *twenty-five cents* instead of [illegible] *cents*
Page 918, Sec. 997 is erroneously printed [illegible]
Page 921, in index to Sec. 1018, after the word *manner* read *of*
Page 923, in index to Sec. 1070 read *County Attorney* instead of *District Attorney*.

ERRATA COMPILED STATUTES—CONTINUED

Page 952, Sec 1100, line 2, after the word *the* read *person* instead of *parson*
Page 961, Sec 1127, marginal note, first word read *Sheriff* instead of *Schriff*
Page 965 in index to Sec 1158, after the word *from* read *Pen* instead of *Pon*
Page 967, Sec 1150, line 1, after the word *shall* read *wilfully*
Page 977, Sec 1183, line 1, first word read *if*
Page 977, Sec 1183, line 5, after the word *in* read *any* instead of *an*
Page 987, Sec 1224, line 9, after the word *of* read *Montana*,
Page 1007, in index to Sec 1306, after the word *non attendance* read *of* instead of *pf*
Page 1007, Sec 1298, line 6, after the word *the* read *Sheriff* instead of *seriff*
Page 1007, Sec 1298, line 7, after the word *summon* read *the* instead of *he*
Page 1007, Sec 1298, last line, after the word *commencing* read *of such*
Page 1007, Sec 1300, first line after the word *box* read *containing*
Page 1013, in index to Sec 1330, after the word *of* read *representatives*
Page 1015, Sec 1330, line 4, after the word *the* read *house*
Page 1019, Sec 1341, line 1, second word read *license*
Page 1027, Sec 1368, last line, after the word *or* read *village*
Page 1033, Sec 1387, line 8, after the word *and* read *every* instead of *evry*
Page 1057, Sec 1403 line 5, after the word *deemed* read *guilty* instead of *gullty*
Page 1074, Chapter XCIX, erroneously printed *Chapter XCIV*
Page 1082, Sec 1594, line 1, after the word *Whenever* read *the*
Page 1088, Sec 1616, line 7, after the word *thousand* read *dollars*
Page 1094, Sec 1635, line 23, after the word *legal* read *advertisements* instead of *adertisements*
Page 1104, in index to Sec 1669, after the word *how* read *levied* instead of *leried*
Page 1109, Sec 1669 line 2, after the word *per* read *centum* instead of *ceuntum*
Page 1110, Sec 1670, line 17 after the word *be* read *construed* instead of *constrned*
Page 1117, Sec 1684, line 5, first word read *lots* instead of *ots*
Page 1117, Sec 1684, line 6, first word read *owners*
Page 1117, Sec 1684, line 8, first word read *lots* instead of *oots*
Page 1117, Sec 1684, line 8, last word read *description*
Page 1157, Sec 1805, last line, after the word *board* read *the* instead of *he*
Page 1166, Sec 1838, last line, after the word *Superintendent* read *or* instead of *of*
Page 1170, Sec 1853 erroneously printed *1854*
Page 1181, Sec 1882, line 11, after the word *organization* read *of* instead of *af*
Page 1192, Sec 1921, line 25, first word read *children*
Page 1193, Sec 1922 line 8, after the word *shall* read *be prosecuted* instead of *beprosecuted*
Page 1201, Sec 1947, line 11, after the word *this* read *Territory* instead of *territory*
Page 1215, Sec 1998, line 6, after the word *shall* read *be* instead of *he*
Page 1219, Sec 2011, line 3, after the word *the* read *United*
Page 1220, Sec 2012, is erroneously printed *2212*
Page 1221, Sec 2015, line 12, after the word *every* read *claimant or* instead of *claimor*
Page 1224, Sec 2025, line 2, last word read *and*
Page 1236, Sec 2075, line 6, second word read *proceeding* instead of *proceedings*
Page 1239, Sec. 3, line 12, after the word *on* read *presentation*
Page 1246, line 6, after the word *the* read *territorial* instead of *territaoial*
Page 1249, Sec 1, line 1, after the word *appropriated* read *out*
In title to index beginning on page 1261 read *Compiled* instead of *Revised*

CERTIFICATE OF AUTHENTICATION.

TERRITORY OF MONTANA }
SECRETARY'S OFFICE. } ss

I, WILLIAM B. WEBB, Secretary of the Territory of Montana, do hereby certify that the "Compiled Statutes of Montana," Special Laws, Memorials and Resolutions, as contained in this volume, are true and correct copies of all Laws, Memorials and Resolutions that were passed at the Fifteenth Regular Session of the Legislative Assembly of said Territory, begun January 10th, A D 1887, and ending March 20th, A D 1887, and held at Helena, the seat of government of said Territory, edited, compiled and indexed as provided by an act entitled "An act to provide for compiling, editing and indexing the General Laws of the Territory of Montana, in force at the adjournment of the Fifteenth Regular Session of the Legislative Assembly," as anacted at the said Fifteenth Regular Session of said Legislative Assembly, with the exception of corrections in punctuation, and omissions or substitute words inserted in brackets.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the Territory of Montana. Done at Helena, the seat of government of said Territory, this twentieth day of December, A D. 1887.

[SEAL.]

WM. B. WEBB,
Secretary of Montana Territory.

ORO Y PLATA

TABLE OF CONTENTS.

PAGE.

Declaration of Independence 1

Constitution of the United States 6

Amendments to Constitution of the United States 16

Laws of Congress relating to Montana 20-55

COMPILED STATUTES OF MONTANA.

FIRST DIVISION

CODE OF CIVIL PROCEDURE.

TITLE I PAGE

Of the Form of Civil Actions 59

TITLE II

Of the Parties to Civil Actions 60

TITLE III

Of the Time of Commencing Actions 65

TITLE IV

Of Place of Trial of Civil Actions 71

TITLE V

Of the Manner of Commencing Civil Actions 74

TITLE VI.

Of Pleadings in Civil Actions 75

TITLE VII

Of Provisional Remedies in Civil Actions 89

TITLE VIII

Judgment in General; Judgment upon Failure to Answer; Issues, their Mode of Trial; Formation of the Jury; Conduct of the Trial; The Verdict; Trial by Court; Of References and Trials by Referees; Exceptions, New Trials; The Manner of Giving and Entering Judgment 118

TITLE IX

Of the Execution of the Judgment in Civil Actions .. . 141

TITLE X —ACTIONS ON PARTICULAR CASES.

Actions for the Foreclosure of Mortgages 157

Actions for Nuisance, Waste and Wilful Trespass in Certain Cases 158

Actions Concerning Real Estate 159

Actions for the Partition of Real Property 163

Actions for the Usurpation of an Office or Franchise 171

TITLE XI

Of Appeals in Civil Actions 172

TITLE XII PAGE
Proceedings Against Joint Debtors 183
Confession of Judgment Without Action 184
Submitting a Controversy Without Action 185
Offer of the Defendants to Compromise the Whole or Part of an Action 186
Of Arbitrations 186
Orders and Motions 188
Notices and Filing and Service of Papers 189
Of Costs 191
Miscellaneous Provisions 197

TITLE XIII
Writs of Certiorari, Mandamus and Prohibition 204

TITLE XIX
Of Contempts and their Punishments 210

TITLE XV
Of Eminent Domain 213

TITLE XVI
Of Evidence 221

TITLE XVII
Courts of Justices in this Territory 241
Forcible Entry and Unlawful Detainer 245

TITLE XVIII
Proceedings in Justices' Courts, in Civil Cases 250

SECOND DIVISION.

PROBATE PRACTICE ACT.

CHAPTER I. PAGE
Organization and Jurisdiction of Probate Courts in Montana 274

CHAPTER II
Probate of Wills 276

CHAPTER III.
Letters Testamentary and of Administration; how and to whom issued 284

CHAPTER IV
Inventory, Appraisement and Possession of Estate 300
Embezzlement and Surrender of Property of the Estate 300

CHAPTER V
Of the Provisions for the Support of the Family 305
Of the Homestead 305

CHAPTER VI
Of Claims against the Estate 309

CHAPTER VII.
Sales 316

CHAPTER VIII.
Of the Powers and Duties of Executors and Administrators 331

CHAPTER IX
Of the Conveyance of Real Estate by Executors and Administrators in Certain Cases 333

CHAPTER X
Of the Accounts Rendered by Executors and Administrators and of the Payment of Debts 336

CHAPTER XI.
Distribution 344

CHAPTER XII.
Of Orders, Decrees, Process, Minutes, Records, Trials and Appeals 352

CHAPTER XIII
Of Public Administrator 356

CHAPTER XIV
Guardians 360

CHAPTER XV PAGE
Guardian and Ward 375
CHAPTER XVI
Execution and Revocation of Wills 379
CHAPTER XVII
Interpretation of Wills and Effect of Various Provisions 386
CHAPTER XVIII
General Provisions 391
CHAPTER XIX
Succession 394
CHAPTER XX
Of Settlements of Small Estates 401
CHAPTER XXI
Minor Heirs, Costs 401

THIRD DIVISION.

CRIMINAL PRACTICE ACT

PAGE
Chap 1 —Elementary Principles 403
Chap 2 —Prevention of Public Offences 405
Chap. 3 —Local Jurisdiction of Crimes 409
Chap 4 —Limitation of Criminal Actions 410
Chap 5 —Proceedings for the Impeachment and Removal of Public Officers 411
Chap 6 —Arrest and Examination of Offenders 415
Chap 7 —Grand Juries and their Proceedings 426
Chap. 8 —The Indictment 434
Chap 9 —Arraignment, and Pleading on the Part of the Defendant 439
Chap 10 —Change of Venue 444
Chap 11 —Bail 447
Chap 12 —Trial, and Incidents Connected Therewith 453
Chap 13 —Proceedings After Trial and Before Judgment 467
Chap 14 —Judgment and Execution 469
Chap 15 —Appeals 476
Chap 16.—Costs in Criminal Cases 478
Chap 17 —Witnesses 482
Chap 18 Miscellaneous Provisions 483
Chap 19 —Proceedings in Probate and Justice of the Peace Courts 491

FOURTH DIVISION.

CRIMINAL LAWS

PAGE
Chap 1 —Persons Capable of Committing Crimes 500
Chap. 2 —Accessories 502
Chap 3 —Witnesses 502
Chap. 4 —Offences Against the Lives and Persons of Individuals 503
Chap 5 —Offences Against Habitations, Other Buildings and Other Property 513
Chap 6 —Offences Against Property 515
Chap 7 —Forgery and Counterfeiting 523
Chap 8 —Crimes and Offences Against Public Justice 527
Chap. 9 —Offences Against the Public Peace and Tranquility 537
Chap 10 —Offences Against Public Morality, Health and Police 541
Chap 11 —Offences Committed by Cheats, Swindlers and Other Fraudulent Persons 555
Chap 12 —Fraudulent and Malicious Mischief 559
Chap 13 —Miscellaneous Offences 563
Chap 14 —General Provisions 583

FIFTH DIVISION.

GENERAL LAWS.

PAGE
Chap 1 —Adoption, Employment and Protection of Children 586
Chap 2 —Animals 592
Chap. 3.—Animals—Prevention of spread of disease among cattle 594
Chap. 4 —Animals—Prevention of spread of disease among sheep 608
Chap. 5.—Animals—Rams, he goats and diseased animals not to run at large 612
Chap. 6.—Fraudulent Pedigrees of Live Stock 613
Chap 7 —Arbitration—Territoral Board 614
Chap 8.—Arsenal, Arms and Ammunition 616
Chap. 9 —Attorneys and Counselors at Law 619
Chap. 10 —Territorial Auditor and Treasurer, and Territorial and County Treasurers 624
Chap 11.—Bastards 633
Chap. 12 —Bills of Exchange and Promissory Notes 636
Chap. 13 —Boards of Health 637
Chap. 14.—Marks and Brands, Trade Marks 639
Chap 15 —Clerks and Deputy Clerks of District Courts 644
Chap. 16.—Commissioners of Deeds 646
Chap. 17 —Common Law 647
Chap 18 —Construction of Statutes 647
Chap. 19 —Contracts and Conveyances 649
Chap 20 —Conveyance of Realty 654
Chap. 21 —Penitentiary and Convicts 666
Chap. 22 —Municipal Corporations 674
Chap 23.—Registration of Voters in Incorporated City or Town 720
Chap 24.—Foreign Corporations 720
Chap. 25 —Corporations for Industrial or Productive Purposes 722
Chap 26.—Assessments upon Stock of Corporations 742
Chap 27.—Banks and Banking 748
Chap 28 —Savings Banks, Trust Deposits and Security Associations 754
Chap 29.—Insurance Companies 765
Chap 30 —Assessment, Life Insurance Companies 784
Chap. 31 —Incorporation of Institutions of Learning 792
Chap 32 —Corporations for Building Purposes 794
Chap. 33 —Building and Loan Associations 795
Chap 34 —Religious, Benevolent and other like Corporations 805
Chap 35.—Railroad Corporations 807
Chap 36 —Railroad Equipments and Rolling Stock 825
Chap 37 —Live Stock Killed or Injured by Railroad 826
Chap. 38 —County Boundaries 832
Chap 39 —County Officers and Powers of Counties 840
Chap. 40 —County Finances, Bonds and Warrants 853
Chap 41.—Probate Judge 862
Chap. 42 —Public Administrators 863
Chap 43 —County Clerk 864
Chap 44.—County Attorney 869
Chap 45 —Sheriffs 871
Chap 46 —Coroner 874
Chap 47.—County Treasurer 878
Chap 48.—County Surveyor 882
Chap. 49.—Assessor 883
Chap 50 —Miscellaneous Provisions 885
Chap 51 —Justices and Constables 890
Chap 52.—Compensation of County Officers, Justices of the Peace and Constables 890
Chap. 53 —Accounts and Settlements of County Officers 907
Chap. 54.—Changing County Seats 910
Chap. 55 —Deceased Persons, Action for Injuries to 911
Chap 56 —Dams and Reservoirs. 912
Chap 57 —Deaf, Mute and Blind Children 916
Chap 58.—Divorce 919
Chap. 59 —General Election Law. 921
Chap 60.—Fees of Clerks of Courts 941
Chap. 61 —Fees of County Officers, Justices of the Peace, Constables, Jurors and Witnesses 953

Chap. 62 —Miscellaneous Provisions 952
Chap. 63.—Fences 955
Chap 64 —Territoral Finances, Bonds, Warrants, etc 959
Chap 65 —Fire Warden 963
Chap 66 —Free Public Library 964
Chap 67 —Protection of Game, Fur-bearing Animals, Birds and Fish 965
Chap 68.—Bounty for killing Certain Animals 970
Chap 69 —Habeas Corpus 973
Chap 70 —Imprisonment for Debt 981
Chap 71 —Infants and Lawful Age 981
Chap 72 —Insane 981
Chap 73 —Interest 991
Chap 74 —Irrigation and Water Rights 992
Chap 75 —Jail and Prisoners 999
Chap. 76 —Joint Debtors 1004
Chap 77 —Joint Rights 1006
Chap 78 —Jurors 1006
Chap 79 —Laws 1009
Chap. 80 —Legislature 1012
Chap. 81 —Licenses 1017
Chap 82 —Liens 1028
Chap 83 —Local Option 1035
Chap 84 —Lord's Day 1039
Chap 85 —Marriage 1039
Chap 86 —Married Women 1043
Chap 87 —Military—Militia 1047
Chap 88 —Mines and Mining Records, Mining Tunnels and Right of Way to Mines 1052
Chap 89 —Mining Shafts, Safety Apparatus 1061
Chap 90.—Montana Historical Society 1062
Chap. 91 —Montana Library 1063
Chap 92 —Mortgages, Chattel and Real 1068
Chap 93 —Names, how changed 1073
Chap 94 —Notaries Public 1074
Chap 95 —Offices and Officers, Territorial and County 1078
Chap 96 —Partnership 1083
Chap. 97 —Poor 1085
Chap 98 —Printing 1090
Chap 99 —Real Estate 1101
Chap. 100 —Revenue 1104
Chap. 101 —Roads and Highways 1152
Chap. 102.—Toll Roads and Bridges 1170
Chap. 103.—School Laws 1172
Chap. 104 —School Text Books 1194
Chap. 105.—School District Funds and Bonds 1199
Chap. 106.—School Teachers' Institute 1205
Chap 107 —Seals 1206
Chap. 108 —Secretary of the Territory 1206
Chap, 109 —Signatures and Marks 1207
Chap 110 —Statistics 1208
Chap. 111 —Stenographers 1210
Chap 112 —Storage and Commission 1211
Chap 113.—Sugar Factory 1212
Chap. 114.—Supreme Court 1213
Chap. 115 —Swine 1215
Chap. 116.—Territorial and County Officers' Reports 1216
Chap 117 —Territorial Seal 1217
Chap. 118.—Toll for Grinding Grain 1217
Chap 119.—Town and Village Sites and Plats 1218
Chap. 120.—Tree Planting and Arboriculture 1228
Chap. 121 —Wage Workers—Protection of 1230
Chap. 122.—Weights and Measures 1232
Chap. 123.—Woolen Factories 1234
Chap 124.—Repeal Provisions 1235

NOTE —The dates of passage of sections are noted immediately under each section. The dates of passage of chapters are noted at the end of the chapters, and give the proper time of passage, except as to such sections as are specially noted. All notes are in nonpareil type

SPECIAL LAWS.

PAGE
An act to provide compensation for Samuel Snyder, etc . 1238
An act to create the county of Park, etc 1238
An act to amend an act entitled "An act to enable the county of Lewis and Clarke to erect a court house," etc 1242
An act to amend an act entitled "An act to create the county of Yellowstone," etc 1242

JOINT RESOLUTIONS.

Relating to the employment of additional clerks 1243
For relief of George Bashaw and others 1243
For the relief of certain Cree Indians 1244
Authorizing the appointment of a committee to confer with the authorities of Dakota, etc 1244
To defray the expense of telegraphing, etc 1244
To provide compensation for William Steele and Frank R Shaffer, accountants 1245
To authorize the employment of additional clerks for the enrolling of bills 1245
To defray the expenses of the executive department 1245
To compensate D H Weston, etc 1245
For the relief of Farragut Post No 7, G A R. 1246
To defray the expenses of the joint committee visiting the penitentiary, etc 1246
Instructing the secretary of the territory to omit the publication of a certain alleged law, etc 1247
Providing for the payment of printing not provided for by the general government 1247
Authorizing the purchase of office furniture, etc 1248
For the relief of Fisk Bros 1248
For the relief of Ansalem J Davidson and William N Baldwin 1249
To provide for the payment of telegraphing, etc 1249
To compensate Chas H Snell, etc 1249
Making appropriation for the Historical society of Montana 1250

JOINT MEMORIALS

Concerning the Crow Indians 1250
Concerning the Fort Buford military reservation 1251
Asking that the office of United States surveyor-general in the territories be not abolished 1251
Relative to pioneer settlers of the Yellowstone National Park 1252
Relating to the extension of the public surveys 1252
Concerning the improvements of the Yellowstone National Park 1253

DECLARATION OF INDEPENDENCE,

IN CONGRESS, JULY 4TH, 1776.

The Unanimous Declaration of the Thirteen United States of America.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and nature's God entitle them, a decent respect to the opinions of mankind requires, that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident—that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused to assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained, and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time after such dissolutions, to cause others to be elected ; whereby the legislative powers, incapable of annihilation, have returned to the people at large, for their exercise ; the state remaining in the meantime, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these states ; for that purpose obstructing the laws for naturalization of foreigners ; refusing to pass others, to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others, to subject us to a jurisdiction, foreign to our constitution, and unacknowledged by our laws ; giving his assent to their acts of pretended legislation—

For quartering large bodies of armed troops among us ;

For protecting them by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states ;

For cutting off our trade with all parts of the world ;

For imposing taxes on us, without our consent ;

For depriving us, in many cases, of the benefits of trial by jury;

For transporting us beyond seas, to be tried for pretended offenses;

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies;

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments;

For suspending our own legislature, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation and tyranny, already begun, with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrection amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts, by their legislature, to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity; and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connection and correspondence. They, too, have been deaf to the voice of justice, and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them as we hold the rest of mankind, enemies in war, in peace, friends.

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain, is, and ought to be, totally dissolved; and that as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

The foregoing declaration was, by order of Congress, engrossed, and signed by the following members:—

JOHN HANCOCK.

New Hampshire.

JOSIAH BARTLETT,
WILLIAM WHIPPLE,
MATTHEW THORNTON.

Massachusetts Bay.

SAMUEL ADAMS,
JOHN ADAMS,
ROBERT TREAT PAINE,
ELBRIDGE GERRY.

Rhode Island, etc.

STEPHEN HOPKINS,
WILLIAM ELLERY.

Connecticut.

ROGER SHERMAN,
SAMUEL HUNTINGTON,
WILLIAM WILLIAMS,
OLIVER WOLCOTT.

New York.

WILLIAM FLOYD,
PHILIP LIVINGSTON,
FRANCIS LEWIS,
LEWIS MORRIS.

Pennsylvania.

ROBERT MORRIS,
BENJAMIN RUSH,
BENJAMIN FRANKLIN,
JOHN MORTON,
GEORGE CLYMER,
JAMES SMITH,
GEORGE TAYLOR,
JAMES WILSON,
GEORGE ROSS.

Delaware.

CÆSAR RODNEY,
GEORGE READ,
THOMAS M'KEAN.

Virginia.

GEORGE WYTHE,
RICHARD HENRY LEE,
THOMAS JEFFERSON,
BENJAMIN HARRISON,
THOMAS NELSON, JR.
FR. LIGHTFOOT LEE,
CARTER BRAXTON.

New Jersey.

RICHARD STOCKTON,
JOHN WITHERSPOON,
FRANCIS HOPKINSON,
JOHN HEART,
ABRAHAM CLARK.

Maryland.

SAMUEL CHASE,
WILLIAM PACA,
THOMAS STONE,
CHAS. CARROLL, of Carrollton.

North Carolina.

WILLIAM HOOPER,
JOSEPH HEWES,
JOHN PENN.

South Carolina.

EDWARD RUTLEDGE,
THOMAS HAYWARD, JR.,
THOMAS LYNCH, JR.,
ARTHUR MIDDLETON.

Georgia.

BUTTON GUINETT,
LYMAN HALL,
GEORGE WALTON.

CONSTITUTION

OF THE

UNITED STATES OF AMERICA.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

SECTION 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

SEC. 2. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and including Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of *New*

Hampshire shall be entitled to choose three, *Massachusetts* eight, *Rhode Island* and *Providence plantations* one, *Connecticut* five, *New York* six, *New Jersey* four, *Pennsylvania* eight, *Delaware* one, *Maryland* six, *Virginia* ten, *North Carolina* five, *South Carolina* five, and *Georgia* three.

When vacancies happen in the representation of any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

SEC. 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into the three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

The senate shall choose their other officers, and also a president *pro tempore*, in the absence of the vice president, or when he shall exercise the office of president of the United States.

The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

SEC. 4. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SEC. 5. Each house shall be the judge of elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SEC. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

SEC. 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it becomes a law, be presented to the president of the United States; if he approve, he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment), shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

Sec. 8. The congress shall have have power—

To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and exc shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasion;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress;

To exercise exclusive legislation in all cases whatsover, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

Sec. 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Sec. 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money, emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of congress.

No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected as follows:—

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[*The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president. But in choosing the president the vote shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case after the choice of the president, the person having the greatest number of votes of the electors shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice president.]

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* Annulled See 12th Amendment.

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the congress may by law provide for the case of removal, death, resignation, or inability both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed or a president shall be elected.

The president shall, at stated times, receive for his services a compensation, which shall neither be increased or diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:—

"I do solemnly swear (*or* affirm), that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

SEC, 2. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states when called into the actual service of the United States; he may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have the power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law; but the congress may by law vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session.

SEC. 3. He shall from time to time give to the congress such information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SEC. 4. The president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION 1. The judicial power of the United States shall be vested in one supreme court, and such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SEC. 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; [*between a state and citizens of another state;] between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state or the citizens thereof, and foreign states, citizens, or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trials shall be held in the state where the said crimes shall have been committed; but when not committed

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*Annulled. See 11th Amendment

within any state, the trial shall be at such place or places as the congress may by law have directed.

Sec. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

Section 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Sec. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Sec. 3. New states may be admitted by the congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any other state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Sec. 4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in eather case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as one or the other mode of ratification may be proposed by the congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

AMENDMENTS

TO THE

Constitution of the United States.

ARTICLE I.

Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to asemble and to petition the government for a redress of grievances.

ARTICLE II.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land and naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject or the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ARTICLE VII.

In suits at common law, where the value at controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined by any court of the United States than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration, in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

ANTICLE XII.

The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom at least shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each, which list they shall sign and certify, and transmit sealed, to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of the death or other unconstitutional disability of the president.

The person having the greatest number of votes as vice president shall be the vice president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the the two highest numbers on the list the senate shall choose the vice president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice president of the United States.

ARTICLE XIII.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SEC. 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of citizens twenty-one years of age in such state.

SEC. 3. No person shall be a senator or representative in congress, or elector of president and vice president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may, by a vote of two-thirds of each House, remove such disability.

SEC. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave, but all such debts, obligations, and claims shall be held illegal and void.

SEC. 5. That congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any state, on account of race, color, or previous condition of servitude.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation.

THE TERRITORIES.

Revised Statutes of the United States.

TITLE XXIII. CHAPTER ONE.

PROVISIONS COMMON TO ALL THE TERRITORIES.

Right of Indians in person and property not impaired by this title, etc boundaries, &c.
Mont. 26, May, 1864.

SEC. 1839. Nothing in this title shall be construed to impair the rights of person or property pertaining to the Indians in any territory so long as such rights remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of such tribe, embraced within the territorial limits or jurisdiction of any state or territory, but all such territory shall be excepted out of the boundaries, and constitute no part of any territory now or hereafter organized until such tribe signifies its assent to the president to be embraced within a particular territory.

Authority to regulate Indians.
Ibid.

SEC. 1840. Nor shall anything in this title be construed to affect the authority of the United States to make any regulations respecting the Indians of any territory, their lands, property, or rights, by treaty, law, or otherwise, in the same manner as might be made if no temporary government existed, or is hereafter established, in any such territory.

Executive power.
Ibid.

SEC. 1841. The executive power of each territory shall be vested in a governor, who shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the president. He shall reside in the territory for which he is appointed, and shall be commander-in-chief of the militia thereof.

He may grant pardons and reprieves, and remit fines and forfeitures, for offenses against the laws of the territory for which he is appointed, and respites for offenses against the laws of the United States, till the decision of the president can be made known thereon. He shall commission all officers who are appointed under the laws of such territory, and shall take care that the laws thereof be faithfully executed.

Veto power. Ibid.

SEC. 1842. Every bill which has passed the legislative assembly of any territory shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it; but, if not, he shall return it, with his objections, to that house in which it originated, and that house shall enter the objections at large on its journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house agree to pass the bill it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and, if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the journal of each house. If any bill is not returned by the governor within three days, Sundays excluded, except in Washington and Wyoming, where the term is five days, Sundays excluded, after it has been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislative assembly, by adjournment *sine die*, prevent its return, in which case it shall not be a law: *Provided*, that so much of this section as provides for making any bill passed by the legislative assembly of a territory a law, without the approval of the governor, shall not apply to the territories of Utah and Arizona.

Secretary. Ibid.

SEC. 1843. There shall be appointed a secretary for each territory, who shall reside within the territory for which he is appointed, and shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the president. In case of the death, removal, resignation, or absence of the governor from the territory, the secretary shall execute all the powers and perform all the duties of governor, during such vacancy or absence, or until another governor is appointed and qualified.

Secretary's duties. Ibid.

SEC. 1844. The secretary shall record and preserve all the laws and proceedings of the legislative assembly, and all the acts and proceedings of the governor in the executive department: he shall transmit one copy of the laws and journals of the legislative assembly, within thirty days after the end of each session thereof, to the president, and two copies of the laws, within like time, to the president of the senate, and to the speaker of the house of representatives, for the use of congress: he shall transmit one copy of the executive proceedings and official correspondence, semi-annually, on the first day of January and July of each year, to the president: he shall prepare the acts passed by the legislative assembly for publication, and furnish a copy thereof to the public printer of the territory, within ten days after the passage of each act.

Legislative powers.
Mont., 26 May, 1864; 3 March, 1869; 20 June, 1874

SEC. 1846. The legislative power in each territory shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The members of both branches of the legislative assembly shall have the qualifications of voters as herein prescribed. They shall be chosen for the term of two years, and the sessions of the respective legislative assemblies shall be biennial. Each legislative assembly shall fix by law the day of the commencement of its regular sessions. The members of the council and of the house of representatives shall reside in the district or county for which they are respectively elected.

Census and elections.
Mont., 26 May, 1864.

SEC. 1847. Previous to the first election for members of the legislative assembly of a territory in which congress may hereafter provide a temporary government, the governor shall cause a census of the inhabitants and qualified voters of the several counties and districts of the territory to be taken by such persons and in such mode as he may designate and appoint, and the persons so appointed shall receive a reasonable compensation for their services. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who superintend such elections and the returns thereof, as the governor may direct; and he shall, at the same time, declare the number of members of the council and house of representatives to which each of the counties or districts is entitled under the act providing such temporary government for the particular territory. The persons having the highest number of legal votes in each of the districts for members of the council shall be declared by the governor to be duly elected to the council; and the persons having the highest number of legal votes for the house of representatives shall be declared by the governor to be duly elected members of that house; but in case two or more persons voted for have an equal number of votes, and in case a vacancy otherwise occurs in either branch of the legislative assembly, the governor shall order a new election; and the persons thus elected to the legislative assembly shall meet at such place and on such day as the governor appoints.

Time and place of holding elections
Ibid.

SEC. 1848. After such first election, however, the time, place and manner of holding elections by the people in any newly-created territory, as well as of holding all such elections in territories now organized, shall be prescribed by the laws of each territory.

Apportionment.
Ibid.

SEC. 1849. The apportionment of representation, which the governor is authorized to make by section eighteen hundred and forty-seven, in the case of a territory hereafter erected by congress, shall be as nearly equal as practicable among the several districts and counties for such first election of the council and house of representatives, giving to each section of the territory representation in the ratio of its population, except Indians not taxed; and thereafter in such new territory, as well as in all territories now organized, the legislative assemblies, respectively, may re-adjust and apportion the representation to the two houses thereof, among the several counties and districts, in such manner from time to time, as they deem just and proper; but the number of either house, as authorized by law, shall not be increased.

Laws to be submitted to congress
Ibid.

SEC. 1850. All laws passed by the legislative assembly and governor of any territory except in the territories of Colorado, Dakota, Idaho, Montana and Wyoming, shall be submitted to congress, and, if disapproved, shall be null, and of no effect.

Extent of legislative power.
Ibid.

SEC. 1851. The legislative power of every territory shall extend to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States. But no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents.

SEC. 1854. No member of the legislative assembly of any territory now organized shall hold or be appointed to any office which has been created, or the salary or emoluments of which have been increased, while he was a member, during the term for which

Members of legislature prohibited from holding certain offices.
Mont., 26 May, 1864.

he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to the members of the first legislative assembly in any territory hereafter organized; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of any territory. The exception of postmasters shall not apply in the territory of Washington.

Prohibition of extra compensation to certain officers
23 Jan. 1873.

SEC. 1855. No law of any territorial legislature shall be made or enforced by which the governor or secretary of a territory, or the members or officers of any territorial legislature are paid any compensation other than that provided by the laws of the United States.

Election of justices of the peace and militia officers.
Mont, 26 May 1864.

SEC. 1856. Justices of the peace and all general officers of the militia in the several territories shall be elected by the people in such manner as the respective legislatures may provide by law.

Other officers.
Ibid.

SEC. 1857. All township, district, and county officers, except justices of the peace and general officers of the militia, shall be appointed or elected in such manner as may be provided by the governor and legislative assembly of each territory; and all other officers not herein otherwise provided for, the governor shall nominate, and by and with the advice and consent of the legislative council of each territory, shall appoint; but, in the first instance, where a new territory is hereafter created by congress, the governor alone may appoint all the officers referred to in this and the preceding section, and assign them to their respective townships, districts, and counties; and the officers so appointed shall hold their offices until the end of the first session of the legislative assembly.

Vacancies, how filled.
8 June, 1872.

SEC. 1858. In any of the territories, whenever a vacancy happens from resignation or death, during the recess of the legislative council, in any office which, under the organic act of any territory, is to be filled by appointment of the governor, by and with the advice and consent of the council, the governor shall fill such vacancy by granting a commission, which shall expire at the end of the next session of the legislative council.

Qualifications of voting and holding office at first election
Mont., 26 May, 1864

SEC. 1859. Every male citizen above the age of twenty-one, including persons who have legally declared their intention to become citizens in any territory hereafter organized, and who are actual residents of such territory at the time of the organization thereof, shall be entitled to vote at the first election in such territory, and to hold any office therein; subject, nevertheless, to the limitations specified in the next section.

At future elections Ibid

SEC. 1860. At all subsequent elections, however, in any territory hereafter organized by congress, as well as at all elections in territories already organized, the qualifications of voters and of holding office shall be such as may be prescribed by the legislative assembly of each territory; subject, nevertheless to the following restrictions on the power of the legislative assembly, namely:

First. The right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of twenty-one years, and by those above that age who have declared on oath, before a competent court of record, their intention to become such, and have taken an oath to support the constitution and government of the United States.

25 Jan., 1867.

Second. There shall be no denial of the elective franchise or of holding office to a citizen on account of race, color, or previous condition of servitude.

Third. No officer, soldier, seaman, mariner or other person in the army or navy, or attached to troops in the service of the United States, shall be allowed to vote in any territory, by reason of being on service therein, unless such territory is, and has been for the period of six months, his permanent domicile.

Fourth. No person belonging to the army or navy shall be elected to or hold any civil office or appointment in any territory.

Delegate to congress. Mont, 26 May 1864

SEC. 1862. Every territory shall have the right to send a delegate to the house of representatives of the United States, to serve during each congress, who shall be elected by the voters in the territory qualified to elect members of the legislative assembly thereof. The person having the greatest number of votes shall be declared by the governor duly elected, and a certificate shall be given accordingly. Every such delegate shall have a seat in the house of representatives, with the right of debating, but not of voting.

Time, places and manner of electing delegate Ibid.

SEC. 1863. The first election of a delegate in any territory for which a temporary government is hereafter provided by congress shall be held at the time time and places and in the manner the governor of such territory may direct, after at least sixty days' notice, to be given by proclamation; but at all subsequent elections therein, as well as at all elections for a delegate in organized territories, such time, places, and manner of holding the elections shall be prescribed by the law of each territory. [See § 25.]

Supreme courts of territories. Ibid.

SEC. 1864. The supreme court of every territory shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and they shall hold their offices for four years, and until their successors are appointed and qualified. They shall hold a term annually at the seat of government of the territory for which they are respectively appointed.

Judicial districts and courts.

SEC. 1865. Every territory shall be divided into three judicial districts; and a district court shall be held in each district of the territory by one of the justices of the supreme court, at such time and place as may be prescribed by law; and each judge, after assignment shall reside in the district to which he is assigned.

Jurisdiction of courts. Ibid, 7 Apr. 1874.

SEC. 1866. The jurisdiction, both appellate and original, of the courts provided for in sections nineteen hundred and seven and nineteen hundred and eight, shall be limited by law.

Jurisdiction of justices of the peace. Ibid.

SEC. 1867. No justices of the peace in any territory shall have jurisdiction of any case, in which the title to land, or the boundary thereof, in anywise comes in question.

Chancery and common law jurisdiction. Ibid.

SEC. 1868. The supreme court and the district courts respectively, of every territory, shall possess chancery as well as common law jurisdiction.

Appellate jurisdiction of supreme court. Ibid.

SEC. 1869. Writs of error, bills of exception and appeals shall be allowed, in all cases, from the final decisions of the district courts to the supreme court of all the territories, respectively, under such regulation as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in that court.

Clerk of supreme court. Mont., 26 May, 1864.

SEC. 1870. The supreme court of each territory shall appoint its own clerk, who shall hold his office at the pleasure of the court for which he is appointed.

Clerk of district court. Ibid.

SEC. 1871. Each judge of the supreme court of the respective territories shall designate and appoint one person as clerk of the district over which he presides, where one is not already appointed, and shall designate and retain but one such clerk where more than one is already appointed, and only such district clerk shall be entitled to a compensation from the United States.

Register in chancery; residence and office.
Ibid.

SEC. 1872. Every district clerk shall be also the register in chancery, and shall reside and keep his office at the place where the court is held.

Judicial districts; how defined.
Ibid.

SEC. 1873. Temporarily, and until otherwise provided by law, the governor of every territory which may be hereafter established, shall define, by proclamation, the judicial districts of such territory, and assign the judges appointed for such territory to the several districts, as well as fix the times and places for holding courts in the respective counties or subdivisions of each judicial district.

Judges of supreme court to hear certain causes.
Ibid.

SEC. 1874. The judges of the supreme court of each territory are authorized to hold court within their respective districts, in the counties wherein, by the laws of the territory, courts have been or may be established, for the purpose of hearing and determining all matters and causes, except those in which the United States is a party; but the expense of holding such courts shall be paid by the territory, or by the counties in which the courts are held, and the United States shall in no case be chargeable therewith.

District attorneys.
Ibid.

SEC. 1875. There shall be appointed in each territory a person learned in the law to act as attorney for the United States. He shall continue in office for four years, and until his successor is appointed and qualified, unless sooner removed by the president.

Marshals
Ibid.

SEC. 1876. There shall be appointed a marshal for each territory. He shall execute all process issuing from the territorial courts when exercising their jurisdiction as circuit and district courts of the United States. He shall have the power and perform the duties, and be subject to the regulations and penalties imposed by law on the marshals for the several judicial districts of the United States. He shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the president.

Appointment of governor &c
Ibid.

SEC. 1877. The governor, secretary, chief justice, and associate justices, attorney, and marshal of every territory shall be nominated and, by and with the advice and consent of the senate, appointed by the president.

SEC. 1878. The governor and secretary for each territory shall, before they act as such, respectively take an oath before the district judge, or some justice of the peace in the limits of the territory for which they are appointed, duly authorized to administer oaths by the laws in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States and faithfully to discharge the duties of their respective offices; and such oaths shall be certified by the person before whom the same are taken; and such certificates shall be received and recorded by the secretary among the executive proceedings; and the chief justice and associate justices, and all other civil officers appointed for any territory, before they act as such, shall take a like oath before the governor or secretary, or some judge or justice of the peace of the territory who may be duly commissioned and qualified, and such oath shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as above directed; but after the first qualification of the officers herein specified in the case of a new territory, as well as in all organized territories, the like oath shall be taken, certified, and recorded in such manner and form as may prescribed by the law of each territory.

Oath of office; how qualified. Ibid. 1 May, 1876

Salaries of justices. 17 June 1870

SEC. 1879. The annual salary of the chief justice and associate justices of all the territories now organized shall be three thousand dollars each.

Salary of attorney. Mont., 26 May, 1864.

SEC. 1880. The salary of the attorney of the United States for each territory shall be at the rate of two hundred and fifty dollars annually.

Salary of marshal. Ibid.

SEC. 1881. The salary of the marshal of the United States for each territory shall be at the rate of two hundred dollars a year.

When salaries to be paid, &c. Ibid.

SEC. 1882. The salaries provided for in this title, to be paid to the governor, secretary, chief justices, and associate justices, district attorney, and marshal of the several territories, shall be paid quarter-yearly at the treasury of the United States.

Fees of clerks &c. 23 June, 1874

SEC. 1883. The fees and costs to be allowed to the United States attorneys and marshals, to the clerks of the supreme and district courts, and to jurors, witnesses, commissioners, and printers in the territories of the United States shall be the same for similar services by such persons as prescribed in chapter 16, title "THE JUDICIARY," and no other compensation shall be taxed or allowed.

Salary not to be paid when officer is absent. Mont., 26 May 1864.

SEC. 1884. When any officer of a territory is absent therefrom, and from the duties of his office, no salary shall be paid him during the year in which such absence occurs, unless good cause therefor be shown to the president, who shall officially certify his opinion of such cause to the proper accounting officer of the treasury, to be filed in his office.

SEC. 1885. The legislative assembly of every territory hereafter organized shall hold its first session at such time and place in the territory as the governor thereof shall appoint and direct; and at the first session of the legislative assembly, or as soon thereafter as it may be deemed expedient, the governor and legislative assembly shall proceed to locate and establish the seat of government for the territory at such place as they may think proper; but such place shall thereafter be subject to be changed by the governor and legislative assembly.

Seat of government in a new territory.
Ibid.

SEC. 1886. All accounts for disbursements in the territories of the United States, of money appropriated by congress for the support of government, therein shall be settled and adjusted at the treasury department; and no act, resolution, or order of the legislature of any territory, directing the expenditure of the sum, shall be deemed a sufficient authority for such disbursement, but sufficient vouchers and proof for the same shall be required by the accounting officers of the treasury. No payment shall be made or allowed, unless the secretary of the treasury has estimated therefor and the object been approved by congress. No session of the legislature of a territory shall be held until the appropriation for its expenses has been made.

Accounts of the territories; no payments unless approved by congress.
Mont. 26 May, 1864

SEC. 1888. No legislative assembly of a territory shall, in any instance or under any pretext, exceed the amount appropriated by congress for its annual expenses.

Limitation on expenses of legislature.
Mont., 26 May, 1864

SEC. 1889. The legislative assemblies of the several territories shall not grant private charters or especial privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate for mining, manufacturing, and other industrial pursuits, or the construction or operation of railroads, wagon roads, irrigating ditches, and the colonization and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any benevolent, charitable, or scientific association.

Legislatures not to grant special charters.
2 March 1867
10 June 1872

SEC. 1890. No corporation or association for religious or charitable purposes shall acquire or hold real estate in any territory, during the existence of the territorial government, of a greater value than fifty thousand dollars; and all real estate acquired or held by

Limitation on right of religious corporations to hold real estate
Mont, 26 May, 1864

such corporation or association contrary hereto shall be forfeited and escheat to the United States; but existing vested rights in real estate shall not be impaired by the provisions of this section.

Constitution and laws of the United States made applicable to all the territories. Mont., 26 May 1864.

SEC. 1891. The constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect in all the organized territories, and in every territory hereafter organized, as elsewhere within the United States.

Penitentiaries. 10 Jan., 1871

SEC. 1892. Any penitentiary which has been, or may hereafter be, erected by the United States in an organized territory shall, when the same is ready for the reception of convicts, be placed under the care and control of the marshal of the United States for the territory or district in which said penitentiary is situated, except as otherwise provided in the case of the penitentiaries in Montana, Idaho, Wyoming and Colorado.

Rules for their government. 10 Jan., 1871

SEC. 1893. The attorney general of the United States shall prescribe all needful rules and regulations for the government of such penitentiary, and the marshal having charge thereof shall cause them to be duly and faithfully executed and obeyed, and the reasonable compensation of the marshal and of his deputies for their services under such regulations shall be fixed by the attorney general.

Payment of marshal, &c., and of expenses of subsistence, &c., of offenders. Ibid.

SEC. 1894. The compensation, as well as the expense incident to the subsistence and employment of offenders against the laws of the United States, who have been, or may hereafter be, sentenced to imprisonment in such penitentiary, shall be chargeable on, and payable out of, the fund for defraying the expenses of suits in which the United States are concerned, and of prosecutions for offenses committed against the United States; but nothing herein shall be construed to increase the maximum compensation now allowed by law to those officers.

Imprisonment in penitentiaries. Ibid.

SEC. 1895. Any person convicted by a court of competent jurisdiction in a territory, for a violation of the laws thereof, and sentenced to imprisonment, may, at the cost of such territory, on such terms and conditions as may be prescribed by such rules and regulations, be received, subsisted, and employed in such penitentiary during the term of his imprisonment, in the same manner as if he had been convicted of an offense against the laws of the United States.

CHAP. 818.—An act to prohibit the passage of local or special laws in the Territories of the United States, to limit Territorial indebtedness, and for other purposes

July 30, 1886.

Territorial legislatures.

Forbidden to pass certain local or special laws.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the legislatures of the Territories of the United States now or hereafter to be organized shall not pass local or special laws in any of the following enumerated cases, that is to say:

Granting divorces.

Changing the names of persons or places.

Laying out, opening, altering, and working roads or highways.

Vacating roads, town-plats, streets, alleys and public grounds.

Locating or changing county seats.

Regulating county and township affairs.

Regulating the practice in courts of justice.

Regulating the jurisdiction and duties of justices of the peace, police magistrates and constables.

Providing for changes of venue in civil and criminal cases.

Incorporating cities, towns, or villages, or changing or amending the charter of any town, city or village.

For the punishment of crimes or misdemeanors.

For the assessment and collection of taxes for territorial, county, township, or road purposes.

Summoning and impaneling grand or petit jurors.

Providing for the management of common schools.

Regulating the rate of interest on money.

The opening and conducting of any election or designating the place of voting.

The sale or mortgage of real estate belonging to minors or others under disability.

The protection of game or fish.

Chartering or licensing ferries or toll bridges.

Remitting fines, penalties, or forfeitures.

Creating, increasing, or decreasing fees, percentage or allowances of public officers during the term for which said officers are elected or appointed.

Changing the law of descent.

Granting to any corporation, association, or individual the right to lay down railroad tracks, or amending existing charters for such purpose.

Granting to any corporation, association, or individual any special or exclusive privilege, immunity, or franchise whatever.

No special law to be enacted where general law can apply.

In all other cases where a general law can be made applicable, no special law shall be enacted in any of the territories of the United States by the territorial legislatures thereof.

Not to subscribe, etc., to any corporation.

SEC. 2. That no territory of the United States now or hereafter to be organized, or any political or municipal corporation or sub-division of any such territory, shall hereafter make any subscription to the capital stock of any incorporated company, or company or association having corporate powers, or in any manner loan its credit to or use it for the benefit of any such company or association, or borrow any money for the use of any such company or association.

In what cases debts may be incurred by Territories.

Limit.

SEC. 3. That no law of any territorial legislature shall authorize any debt to be contracted by or on behalf of such territory except in the following cases To meet a casual deficit in the revenues, to pay the interest upon the territorial debt, to suppress insurrections, or to provide for the public defense, except that in addition to any indebtedness created for such purposes, the legislature may authorize a loan for the erection of penal, charitable or educational institutions for such territory, if the total indebtedness of the territory is not thereby made to exceed one per centum upon the assessed value of the taxable property in such territory as shown by the last general assessment for taxation. And nothing in this act shall be construed to prohibit the refunding of any existing indebtedness of such territory or of any political or municipal corporation, county, or other sub-division therein.

Not to prohibit refunding

Limit of indebtedness which may be incurred by counties, etc.

Not to be retroactive.

SEC. 4. That no political or municipal corporation, county, or other sub-division in any of the territories of the United States shall ever become indebted in any manner or for any purpose to any amount in the aggregate, including existing indebtedness, exceeding four per centum on the value of the taxable property within such corporation, county, or sub-division, to be ascertained by the last assessment for territorial and county taxes previous to the incurring of such indebtedness; and all bonds or obligations in excess of such amount given by such corporation shall be void: That nothing in this act contained shall be so construed as to affect the validity of any act of any territorial legislature heretofore enacted, or of any obligations existing or contracted thereunder, nor to preclude the issuing of bonds already contracted for in pursuance of express provisions of law; nor to prevent any territorial legislature from legalizing the acts of any county, municipal corporation, or sub-division of any territory as to any bonds heretofore issued or contracted to be issued.

SEC. 5. That section eighteen hundred and eighty-nine, title twenty-three, of the revised statutes of the United States be amended to read as follows:

R. S., sec. 1889, p. 333, amended.

"The legislative assemblies of the several territories shall not grant private charters or special privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate for mining, manufacturing, and other industrial pursuits, and for conducting the business of insurance, banks of discount and deposit (but not of issue) loan, trust, and guarantee associations, and for the construction or operation of railroads, wagon-roads, irrigating ditches, and the colonization and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any other benevolent, charitable or scientific association."

General incorporation acts.

Insurance, banking, etc., associations included.

SEC. 6. That nothing in this act contained shall be construed to abridge the power of congress to annul any law passed by a territorial legislature, or to modify any existing law of congress requiring in any case that the laws of any territory shall be submitted to congress.

Power of Congress to annul, etc. laws, not abridged.

SEC. 7. That all acts and parts of acts hereafter passed by any territorial legislature in conflict with the provisions of this act shall be null and void.

Acts in conflict to be null and void

Approved, July 30, 1886.

CHAP 340—An act to restrict the ownership of real estate in the territories to American citizens, and so forth.

Mar. 3, 1887.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any person or persons not citizens of the United States, or who have not lawfully declared their intention to become such citizens, or for any corporation not created by or under the laws of the United States or of some state or territory of the United States, to hereafter acquire, hold, or own real estate so hereafter acquired, or any interest therein, in any of the territories of the United States or in the District of Columbia, except such as may be acquired by inheritance or in good faith in the

Territories.
Alien persons or corporations prohibited from acquiring real estate in.

Exception

Proviso.

ordinary course of justice in the collection of debts heretofore created: *Provided*, That the prohibition of this section shall not apply to cases in which the right to hold or dispose of lands in the United States is secured by existing treaties to the citizens or subjects of foreign countries, which rights, so far as they may exist by force of any such treaty shall continue to exist so long as such treaties are in force, and no longer.

Treaty-rights not impaired.

Corporation having more than 20 p. ct. of stock held by aliens prohibited from holding real estate.

SEC. 2. That no corporation or association more than twenty per centum of the stock of which is or may be owned by any person or persons, corporation or corporations, association or associations, not citizens of the United States, shall hereafter acquire or hold or own any real estate hereafter acquired in any of the territories of the United States or of the District of Columbia.

Maximum of land which may be held by corporations.

SEC. 3. That no corporation other than those organized for the construction or operation of railways, canals, or turnpikes shall acquire, hold, or own more than five thousand acres of land in any of the territories of the United States; and no railroad, canal, or turnpike corporation shall hereafter acquire, hold, or own lands in any territory, other than as may be necessary for the proper operation of its railroad, canal, or turnpike, except such lands as may have been granted to it by act of congress. But the prohibition of this section shall not affect the title to any lands now lawfully held by any such corporation.

Congressional grants.

Present titles not affected.

Property unlawfully held to be forfeited.

SEC. 4. That all property acquired, held, or owned in violation of the provisions of this act shall be forfeited to the United States, and it shall be the duty of the attorney-general to enforce every such forfeiture by bill in equity or other proper process. And in any suit or proceeding that may be commenced to enforce the provisions of this act, it shall be the duty of the court to determine the very right of the matter without regard to matters of form, joinder of parties, multifariousness, or other matters not affecting the substantial rights either of the United States or of the parties concerned in any such proceeding arising out of the matters in this act mentioned.

Suits

Approved, March 3, 1887.

CHAP 397.—An act to amend an act entitled "An act to amend section fifty-three hundred and fifty-two of the revised statutes of the United States, in reference to bigamy, and for other purposes," approved March twenty-second, eighteen hundred and eighty-two.

Mar. 3, 1887.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, SEC. 1. That in any proceeding or examination before a grand jury, a judge, justice, or a United States commissioner, or a court, in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, the lawful husband or wife of the person accused shall be a competent witness, and may be called, but shall not be compelled to testify in such proceeding, examination, or prosecution without the consent of the husband or wife, as the case may be; and such witness shall not be permitted to testify as to any statement or communication made by either husband or wife to each other, during the existence of the marriage relation, deemed confidential at common law.

Anti-polygamy act.
Vol. 22, p. 30
Husband or wife may testify in prosecutions for polygamy

SEC. 2. That in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, whether before a United States commissioner, justice, judge, a grand jury, or any court, an attachment for any witness may be issued by the court, judge, or commissioner, without a previous subpœna, compelling the immediate attendance of such witness, when it shall appear by oath or affirmation, to the commissioner, justice, judge, or court, as the case may be, that there is reasonable ground to believe that such witness will unlawfully fail to obey a subpœna issued and served in the usual course in such cases; and in such case the usual witness fee shall be paid to such witness so attached: *Provided*, That the person so attached may at any time secure his or her discharge from custody by executing a recognizance with sufficient surety, conditioned for the appearance of such person at the proper time, as a witness in the cause or proceeding wherein the attachment may be issued.

Attachment of witnesses.

Proviso

Recognizance.

SEC. 3. That whoever commits adultery shall be punished by imprisonment in the penitentiary not exceeding three years; and when the act is committed between a married woman and a man who is unmarried, both parties to such act shall be deemed guilty of adultery; and when such act is committed between a married man and a woman who is unmarried, the man shall be deemed guilty of adultery.

Punishment for adultery.

Punishment for incest.

SEC. 4. That if any person related to another person within and not including the fourth degree of consanguinity computed according to the rules of the civil law, shall marry or cohabit with, or have sexual intercourse with such other so related person, knowing her or him to be within said degree of relationship, the person so offending shall be deemed guilty of incest, and, on conviction thereof, shall be punished by imprisonment in the penitentiary not less than three years and not more than fifteen years.

Punishment for fornication.

SEC. 5. That if an unmarried man or woman commit fornication, each of them shall be punished by imprisonment not exceeding six months, or by a fine not exceeding one hundred dollars.

Marriage ceremonies in the territories.

Certificates.

SEC. 9. That every ceremony of marriage or in the nature of a marriage ceremony of any kind, in any of the territories of the United States, whether either or both or more of the parties to such ceremony be lawfully competent to be the subjects of such marriage or ceremony or not, shall be certified by a certificate stating the fact and nature of such ceremony, the full names of each of the parties concerned, and the full name of every officer, priest and person, by whatever style or designation called or known, in any way taking part in the performance of such ceremony, which certificate shall be drawn up and signed by the parties to such ceremony, and by every officer, priest and person taking part in the performance of such ceremony, and shall be by the officer, priest or other person solemnizing such marriage or ceremony filed in the office of the probate court; or, if there be none, in office of the court having probate powers in the county or district in which such ceremony shall take place, for record, and shall be immediately recorded, and be at all times subject to inspection as other public records. Such certificate, or the record thereof, or a duly certified copy of such record shall be *prima facie* evidence of the facts required by this act to be stated therein, in any proceeding, civil or criminal, in which the matter shall be drawn in question. Any person who shall willfully violate any of the provisions of this section shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine of not more than one thousand dollars, or by imprisonment not longer than two years, or by both said punishments, in the discretion of the court.

To be prima facie evidence.

Penalty for violation

Other proof admissible.

SEC. 10. That nothing in this act shall be held to prevent the proof of marriages, whether lawful or unlawful, by any evidence now legally admissible for that purpose.

Proceedings to forfeit property of corporations.
Vol 12 p 501, R S, sec. 1890 p 333.

SEC. 13. That it shall be the duty of the attorney general of the United States to institute and prosecute proceedings to forfeit and escheat to the United States the property of corporations obtained or held in violation of section three of the act of congress approved the first day of July, eighteen hundred and sixty-two, entitled "An act to punish and prevent the practice of polygamy in the territories of the United States and other places, and disapproving and annulling certain acts of the legislative assembly of the territory of Utah," or in violation of section eighteen hundred and ninety of the revised statutes of the United States; and all such property so forfeited and escheated to the United States shall be disposed of by the secretary of the interior, and the proceeds thereof applied to the use and benefit of the common schools in the territory in which such property may be: *Provided*, That no building, or the grounds appurtenant thereto, which is held and occupied exclusively for purposes of the worship of God, or parsonage connected therewith, or burial ground shall be forfeited.

Proceeds.

Proviso

Houses of worship, etc, excepted

Production of of books, etc.

SEC. 14. That in any proceeding for the enforcement of the provisions of law against corporations or associations acquiring or holding property in any territory of the United States, in excess of the amount limited by law, the court before which such proceeding may be instituted shall have power in a summary way to compel the production of all books, records, papers, and documents of or belonging to any trustee or person holding or controlling or managing property in which such corporation may have any right, title, or interest whatever.

Dower rights

SEC. 18. (*a*) A widow shall be endowed of third part of all the lands whereof her husband was seized of an estate of inheritance at any time during the marriage unless she shall have lawfully released her right thereto.

Widow of alien.

(*b*) The widow of any alien who at the time of his death shall be entitled by law to hold any real estate, if she be an inhabitant of the territory at the time of such death, shall be entitled to dower of such estate in the same manner as if such alien had been a native citizen.

Lands exchanged for land.

(*c*) If a husband seized of an estate of inheritance in lands exchanges them for other lands, his widow shall not have dower of both, but shall make her election to be endowed of the lands given or of those taken in exchange; and if such election be not evinced by the commencement of proceedings to recover her dower of the lands given in exchange within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.

Out of mortgaged lands.

(*d*) When a person seized of an estate of inheritance in lands shall have executed a mortgage, or other conveyance in the nature of mortgage, of such estate, before marriage, his widow shall nevertheless be entitled to dower out of the lands mortgaged or so conveyed as against every person except the mortgagee or grantee in such conveyance and those claiming under him.

Lands purchased and mortgaged.

(*e*) Where a husband shall purchase lands during coverture, and shall at the same time execute a mortgage, or other conveyance in the nature of mortgage, of his estate in such lands to secure the payment of the purchase-money, his widow shall not be entitled to dower out of such lands, as against the mortgagee or grantee in such conveyance or those claiming under him, although she shall not have united in such mortgage; but she shall be entitled to her dower in such lands as against all other persons.

Sales under mortgage.

(*f*) Where in such case the mortgagee, or such grantee or those claiming under him, shall, after the death of the husband of such widow, cause the land mortgaged or so conveyed to be sold, either under a power of sale contained in the mortgage or such conveyance or by virtue of the decree of a court if any surplus shall remain after payment of the moneys due on such mortgage or such conveyance, and the costs and charges of the sale, such widow shall nevertheless be entitled to the interest or income of the one-third part of such surplus for her life, as her dower.

Absolute interest necessary.

(*g*) A widow shall not be endowed of lands conveyed to her husband by way of mortgage unless he acquire an absolute estate therein during the marriage period.

Barred by divorce.

(*h*) In case of divorce dissolving the marriage contract for the misconduct of the wife, she shall not be endowed.

Trustees for real property of religious corporations.

SEC. 26. That all religious societies, sects, and congregations shall have the right to have and to hold, through trustees appointed by any court exercising probate powers in a territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship, and for such parsonages and burial grounds as shall be necessary for the convenience and use of the several congregations of such religious society, sect, or congregation.

Received by the President, February 19, 1887.

[NOTE BY THE DEPARTMENT OF STATE.—The foregoing act having been presented to the president of the United States for his approval, and not having been returned by him to the house of congress in which it originated within the time prescribed by the constitution of the United States, has become a law without his approval.]

CHAPTER TWO.

Of Provisions Concerning Particular Organized Territories.

SECTIONS RELATING TO THE TERRITORY OF MONTANA

Boundaries and establishment of Montana.
26 May, 1864

SEC. 1903. All that part of the territory of the United States included within the following limits, to-wit: Commencing at a point formed by the intersection of the twenty-seventh degree of longitude west from Washington with the forty-fifth degree of north latitude; thence due west on the forty-fifth degree of latitude, to a point formed by its intersection with the thirty-fourth degree of longitude west from Washington; thence due south along the thirty-fourth degree of longitude, to a point formed by its intersection with the crest of the Rocky mountains; thence following the crest of the Rocky mountains northward till its intersection with the Bitter Root mountains; thence northward, along the crest of the Bitter Root mountains, to its intersection with the thirty-ninth degree west from Washington; thence along the thirty-ninth degree of longitude northward to the boundary line of the British possessions; thence eastward, along that boundary line, to the twenty-seventh degree of longitude west from Washington; thence southward, along the twenty-seventh degree of longitude, to the place of beginning,—is created into a temporary government by the name of the territory of Montana.

Delegate to congress from Montana must be a citizen of the United States.
Ibid.

SEC. 1906 The delegate to the house of representatives from each of the territories of Washington, Idaho and Montana, must be a citizen of the United States.

The judicial power—how vested in Montana.

SEC. 1907. The judicial power in New Mexico, Utah, Washington, Colorado, Dakota, Idaho, Montana, and Wyoming shall be vested in a supreme court, district courts, probate courts, and in justices of the peace.

SEC. 1909. Writs of error and appeals from the final decisions of the supreme court of either of the territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana, and Wyoming shall be allowed to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath of either party, or of other competent witnesses, exceeds five thousand dollars, exclusive of costs, except that a writ of error or appeal shall be allowed to the supreme court of the United States from the decision of the supreme courts created by this title, or of any judge thereof, or of the district courts created by this title, or of any judge thereof, upon writs of *habeas corpus* involving the question of personal freedom.

Writs of error to United States supreme court
Ibid, 23 June 1874

SEC. 1910. Each of the district courts in the territories mentioned in the preceding section shall have and exercise the same jurisdiction, in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and the first six days of every term of the respective district courts, or so much thereof as is necessary, shall be appropriated to the trial of causes arising under such constitution and laws; but writs of error and appeals in all such cases may be had to the supreme court of each territory, as in other cases.

Jurisdiction of district courts under constitution, &c.
Ibid

SEC. 1914. The judges of the supreme courts of the territories of Idaho and Montana, or a majority of them shall, when assembled at their respective seats of government, define the judicial districts of each of such territories, and assign the judges who may be appointed for each of such territories to the several districts; and shall also fix the times and places for holding court in the several counties or sub-divisions in each of such judicial districts, and alter the times and places of holding the courts, as to them may seem proper and convenient; but not less that two terms a year shall be held at each place of holding court in the territory of Montana.

Judges of supreme court in Idaho and Montana to define judicial districts, &c
Mont 2, March, 1867

SEC. 1926. Justices of the peace, in the territories of New Mexico, Utah, Dakota, and Wyoming, shall not have jurisdiction of any matter in controversy where the debt or sum claimed exceeds one hundred dollars.

Jurisdiction of justices of the peace in New Mexico, and other territories.
Ibid.

Jurisdiction of probate courts in Montana.
2 Mar. 1867

SEC. 1932. The probate courts of the territory of Montana, in their respective counties, in addition to their probate jurisdiction, are authorized to hear and determine civil causes wherein the damage or debt claimed does not exceed five hundred dollars, and such criminal cases arising under the laws of the territory as do not require the intervention of a grand jury; but they shall not have jurisdiction of any matter in controversy when the title or right to the peaceable possession of land may be in dispute, or of chancery or divorce causes; and in all cases an appeal may be taken from any order, judgment, or decree of the probate courts to the district court.

Legislative expenses in Washington, Idaho, and Montana.
Mont., 26 May 1864.

SEC. 1940. There shall be appropriated, repectively, for the territories of Washington, Idaho, and Montana, annually, a sufficient sum, to be expended by the secretary of each territory herein named, upon an estimate to be made by the secretary of the treasury, to defray the expenses of the legislative assembly and other incidental expenses. The governor and secretary of each territory above specified shall, in the disbursement of all moneys intrusted to them, be governed solely by the instructions of the secretary of the treasury, and shall, semi-annually, account to such secretary for the manner in which such sums of money have been expended.

No payment of salaries in certain territories until officers enter on their duties.
Ibid.

SEC. 1941. No payment of salary shall be made to the governor, secretary, chief justice, and associate justices of Washington, Idaho, and Montana territories, until such officers have entered upon the duties of their respective appointments.

Mileage in Idaho and Montana.
Ibid.

SEC. 1943. The members of the legislative assembly of Idaho and Montana territories shall each receive four dollars for every twenty miles' travel in going to and returning from the sessions of their respective bodies, estimated according to the nearest usually traveled route.

Seat of government; how changed in Idaho and Montana.
Ibid.

SEC. 1945. The seat of government, when once fixed by the governor and legislative assembly of Idaho and Montana, respectively, shall not be at any time changed, except by an act of such assembly for each territory, respectively, duly passed and approved, after due notice, at the first general election thereafter, by a majority of the legal votes cast on that question.

School lands in certain territories.
Ibid

SEC. 1946. Sections numbered sixteen and thirty-six, in each township of the territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana, and Wyoming shall be reserved for the purpose of being applied to schools in the several territories herein named, and in the states and territories hereafter to be erected out of the same.

Disbursing officers in Washington, Idaho, and Montana to give security.
Ibid.

SEC. 1951. All officers to be appointed by the president by and with the advice and consent of the senate, for the territories of Washington, Idaho and Montana, who, by virtue of the provisions of any law now existing, or which may be enacted by congress, are required to give security for moneys that may be intrusted to them for disbursement, shall give such security at such time and in such manner as the secretary of the treasury may prescribe.

Session Laws of Congress

Relating to Government in Montana.

ENACTED SUBSEQUENT TO THE REVISION.

FORTY-THIRD CONGRESS SESSION I. CHAPTER 80—An act concerning the practice in territorial courts, and appeals therefrom

Preamble

WHEREAS, by the organic acts establishing several of the territories of the United States, it is provided that certain courts thereof shall have common law and chancery jurisdiction, and doubts having been entertained whether said jurisdictions must be exercised separately, or whether they may be exercised together in the same proceeding, and whether the codes and rules of practice adopted in said territories which have authorized a mingling of said jurisdictions in the same proceeding, or a uniform course of proceeding in all cases, legal and equitable, are repugnant to the said organic acts respectively: therefore,

Common law and chancery jurisdiction of territorial courts.

Trial by jury.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall not be necessary in any of the courts of the several territories of the United States to exercise separately the common law and chancery jurisdictions vested in said courts; and that the several codes and rules of practice adopted in the said territories respectively, in so far as they authorize a mingling of said jurisdictions, or a uniform course of proceeding in all cases, whether legal or equitable, be confirmed; and that all proceedings heretofore had or taken in said courts, in conformity with said respective codes and rules of practice, so far as relates to the form and mode of proceeding, be, and the same are hereby validated and confirmed: *Provided*, That no party has been or shall be deprived of the right of trial by jury in cases cognizable at common law.

SEC. 2. That the appellate jurisdiction of the supreme court of the United States, over the judgments and decrees of said territorial courts in cases of trial by jury, shall be exercised by writ of error, and in all other cases by appeal, according to such rules and regulations as to form and modes of proceeding as the said supreme court has prescribed, or may hereafter prescribe: *Provided*, That on appeal, instead of the evidence at large, a statement of the facts of the case in the nature of a special verdict, and also the rulings of the court on the admission or rejection of evidence when excepted to, shall be made and certified by the court below, and transmitted to the supreme court, together with the transcript of the proceedings and judgment or decree; but no appellate proceedings in said supreme court, heretofore taken upon any such judgment or decree, shall be invalidated by reason of being instituted by writ of error or by appeal: *And provided further*, That the appellate may make any order in any case heretofore appealed, which may be necessary to save the rights of the parties; and that this act shall not apply to cases now pending in the supreme court of the United States where the record has already been filed.

Appellate jurisdiction of supreme court of United States; how exercised

Proceedings on appeal

Proviso.

Approved, April 7, 1874.

IBID. CHAP. 332—An act to amend the act entitled "An act transferring the control of certain territorial penitentiaries to the several territories in which the same are located," approved January twenty-fourth, eighteen hundred and seventy-three

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That the act entitled "An act transferring the control of certain territorial penitentiaries to the several territories in which the same are located," approved January twenty-fourth, eighteen hundred and seventy-three, be, and the same is hereby, amended by striking out the words Montana, Idaho, and Wyoming, wherever the same occur in said act, and the said act shall hereafter have no applicability to the territories of Montana, Idaho, and Wyoming.

Penitentiaries in Montana, Idaho and Wyoming territories.

SEC. 2. That the penitentiaries in the territories of Montana, Idaho, and Wyoming shall continue under the care and control of the marshal of the United States for said territories, under and pursuant to the provisions of the act entitled "An act in relation to certain territorial penitentiaries," approved January tenth, eighteen hundred and seventy-one; which said last men-

To continue under control of United States marshals tioned act is hereby revived and re-enacted so far as the same applies to the territories of Montana, Idaho, and Wyoming.

Approved June 20, 1874.

FORTY-THIRD CONGRESS SESSION II, CHAPTER 114. An act to protect all citizens in their civil and legal rights

Preamble.

WHEREAS, it is essential to just government we recognize the equality of all men before the law, and hold that it is the duty of government in its dealings with the people to mete out equal and exact justice to all, of whatever nativity, race, color, or persuation, religious or political; and it being the appropriate object of legislation to enact great fundamental principles into law: therefore,

Equal enjoyment of inns, public conveyances, theaters, &c.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.

Forfeit to person aggrieved by denial of equal enjoyment of inns, &c.

Punishment for denying, &c.

Election of remedies.

Effect of recoveries.

SEC. 2. That any person who shall violate the foregoing section by denying to any citizen, except for reasons by law applicable to citizens of every race and color, and regardless of any previous condition of servitude, the full enjoyment of any of the accommodations, advantages, facilities or privileges in said section enumerated, or by aiding or inciting such denial, shall, for every such offense, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered in an action of debt, with full costs, and shall also, for every such offense, be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred nor more than one thousand dollars, or shall be imprisoned not less than thirty days nor more than one year: *Provided*, that all persons may elect to sue for the penalty aforesaid, or to proceed under their rights at common law and by state statutes; and having so elected to proceed in the one mode or the other, their right to proceed in the other jurisdiction shall be barred. But this proviso shall not apply to criminal proceedings, either under this act or the criminal law of any state: *And provided further*, that a judgment for the penalty in favor of the party aggrieved, or a judgent upon an indictment, shall be a bar to either prosecution, respectively.

SEC. 3, That the district and circuit courts of the United States shall have, exclusively of the courts of the several states, cognizance of all crimes and offenses against, and violations of the provisions of this act; and actions for the penalty given by the preceeding section may be prosecuted in the territorial, district, or circuit courts of the United States whereever the defendant may be found, without regard to the other party, and the district attorneys, marshals, and deputy marshals of the United States, and commissioners appointed by the circuit and territorial courts of the United States, with powers of arresting and imprisoning or bailing offenders against the laws of the United States, are hereby specially authorized and required to institute proceedings against every person who shall violate the provisions of this act, and cause him to be arrested and imprisoned or bailed, as the case may be, for trial before such court of the United States, or territorial court, as by law has cognizance of the offense, except in respect of the right of action accruing to the person aggrieved; and such district attorneys shall cause such proceedings to be prosecuted to their termination as in other cases: *Provided*, That nothing contained in this section shall be construed to deny or defeat any right of civil action accruing to any person, whether by reason of this act or otherwise; and any district attorney who shall willfully fail to institute and prosecute the proceedings herein required shall, for every such offense, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered by an action of debt, with full costs, and shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not less than one thousand nor more than five thousand dollars: *And provided further*, That a judgment for the penalty in favor of the party aggrieved against any such district attorney, or a judgment upon an indictment against any such district attorney, shall be a bar to either prosecution respectively.

Jurisdiction of courts under this act.

Duty of district attorneys, marshals, and commissioners under this act.

Right of civil action not affected

Failure of district attorney to prosecute

Effect of judgment against district attorney

SEC. 4. That no citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any state, on account of race, color, or previous condition of servitude; and any officer or other person charged with any duty in the selection or summoning of jurors who shall exclude or fail to summon any citizen for the cause

Exclusion from service as juror.

Penalty for excluding, &c.

aforesaid shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not more than five thousand dollars.

Review in supreme court.

SEC. 5. That all cases arising under the provisions of this act in the courts of the United States shall be reviewable by the supreme court of the United States without regard to the sum in controversy, under the same provisions and regulations as are now provided by law for the review of other causes in said court.

Approved March 1, 1875.

Salaries of territorial officers, when to commence.

Oaths, where administered. 1 May, 1876.

FORTY-FOURTH CONGRESS. SESSION I. CHAP 88. EXTRACT. * * * * And hereafter payment of salaries of all officers of the territories of the United States appointed by the president, shall commence only when the person appointed to any such office shall take the proper oath, and shall enter upon the duties of such office in such territory; and said oath shall hereafter be administered in the territory in which such office is held.

Sessions of legislature 15 Aug. 1876.

IBID. CHAP. 287. EXTRACT. Territory of Montana: * * * * *Provided*, That the next legislative assembly shall convene at the seat of government of the territory on the second Monday of January, eighteen hundred and seventy-seven, and biennially thereafter.

FORTY-FOURTH CONGRESS. SESSION II. CHAP. 107

Desert lands may be purchased.

Declaration.

3 Mar., 1877

Right to use water.

Water on public lands to be free.

Contents of declaration.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for any citizen of the United States, or any person of requisite age "who may be entitled to become a citizen, and who has filed his declaration to become such," and upon payment of twenty-five cents per acre—to file a declaration, under oath, with the register and receiver of the land district in which any desert land is situated, that he intends to reclaim a tract of desert land not exceeding one section, by conducting water upon the same, within the period of three years thereafter: *Provided. however*, That the right to the use of water by the person so conducting the same, on or to any tract of desert land of six hundred and forty acres, shall depend upon *bona fide* prior appropriation; and such right shall not exceed the amount of water actually appropriated, and necessarily used for the purpose of irrigation and reclamation; and all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers, and other sources of water supply upon the public lands, and not navigable, shall be held and remain free from the appropriation and use of the public for irrigation, mining, and manufacturing purposes subject to existing rights. Said declaration shall describe particularly said section of land, if surveyed, and, if unsurveyed, shall describe the same as nearly as possible without a survey. At any time within a period of three years after filing said declaration, upon making satisfactory proof to the register and receiver of the reclamation of said tract of land, in the manner aforesaid, and upon the payment to the receiver of the additional sum of one dollar per acre for a tract of land not exceeding six hundred and forty acres to any one person, a patent for the same shall be issued to him: *Provided*, That no person shall be permitted to enter more than one tract of land, and not to exceed six hundred and forty acres, which shall be in compact form.

Perfection of title.

Limit to quantity of land purchasable

SEC. 2. That all lands exclusive of timber lands and mineral lands, which will not, without irrigation, produce some agricultural crop, shall be deemed desert lands, within the meaning of this act, which fact shall be ascertained by proof of two or more credible witnesses, under oath, whose affidavits shall be filed in the land office in which said tract of land may be situated.

Desert lands defined.

SEC. 3. This act shall only apply to and take effect in the states of California, Oregon, and Nevada, and the territories of Washington, Idaho, Montana, Utah, Wyoming, Arizona, New Mexico, and Dakota, and the determination of what may be considered desert land shall be subject to the decision and regulation of the commissioner of the general land office.

Localities in which act to apply.

FORTY-FIFTH CONGRESS. SESSION II. CHAP. 37. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in the trial of all indictments, informations, complaints, and other proceedings against persons charged with the commission of crimes, offenses, and misdemeanors, in the United States' courts, territorial courts, and courts-martial, and courts of equity, in any state or territory, including the District of Columbia, the person so charged shall, at his own request, but not otherwise, be a competent witness. And his failure to make such request shall not create any presumption against him.

Accused persons may testify.
16 Mar., 1878

Wood cut on unsurveyed land.
30 April, 1878.

IBID. CHAP. 76. EXTRACT. * * * * * *And provided further*, That where wood and timber lands in the territories of the United States are not surveyed and offered for sale in the proper sub-divisions, convenient of access, no money herein appropriated shall be used to collect any charge for wood or timber cut on the public lands in the territories of the United States for the use of actual settlers in the territories, and not for export from the territories of the United States, where the timber grew: *And provided further*, That if any timber cut on the public lands shall be exported from the territories of the United States, it shall be liable to seizure by the United States authority wherever found.

Timber and mineral lands may be taken for certain purposes.
3 June, 1878

IBID. CHAP. 150. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all the citizens of the United States, and other persons *bona fide* residents of the states of Colorado or Nevada, or either of the territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and all other mineral districts of the United States shall be, and are hereby, authorized and permitted to fell and remove for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States, except for mineral entry, in either of said states, territories, or districts, of which such citizens or persons may be at the time *bona fide* residents, subject to such rules and regulations as the secretary of the interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes; *Provided*, The provisions of this act shall not extend to railroad corporations.

Proviso.

Taking, &c., for unauthorized purposes.

SEC. 2. That it shall be the duty of the register and the receiver of any local land office in whose district any mineral land may be situated to ascertain from time to time whether any timber is being cut or used upon any such lands, except for the purpose authorized by this act, within their respective land districts; and, if so, they shall immediately notify the commissioner of the general land office of the fact; and all necessary expenses incurred in making such proper examinations shall be paid and allowed such register and receiver in making up their next quarterly accounts.

Penalty.

SEC. 3. Any person or persons who shall violate the provisions of this act or any rules and regulations in pursuance thereof made by the secretary of the interior, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding five hundred dollars, and to which may be added imprisonment for any term not exceeding six months.

Municipal corporations in territories
8 June, 1878
Sec 1889, R. S, page 133. construed

Private rights.

Contracts.

Corporation debts

IBID. CHAP. 168. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the words "the legislative assemblies of the several territories shall not grant private charters or special privileges" in section eighteen hundred and eighty-nine of the revised statutes of the United States shall not be construed as prohibiting the legislative assemblies of the several territories of the United States from creating towns, cities or other municipal corporations, and providing for the government of the same, and conferring upon them the corporate powers and privileges, necessary to their local administration, by either general or special acts; and that all general and special acts of such legislative assemblies heretofore passed creating and providing for the government of towns, cities, or other municipal corporations, and conferring such rights, powers and privileges upon the same, as were necessary to their local administration, be, and the same are hereby, ratified and confirmed and declared to be valid, any law to the contrary notwithstanding; subject, however, to amendment or repeal hereafter by such territorial assemblies. But nothing herein shall have the effect to create any private right, except that of holding and executing municipal offices, or to divest any such right, or to make valid or invalid any contract or obligation heretofore made by or on behalf of any such town, city, or other municipal corporation, or to authorize any such corporation to incur hereafter any debt or obligation other than such as shall be necessary to the administration of its internal affairs.

Councils and houses of representatives in territories
19 June, 1878.

Number

Compensation

IBID. CHAP. 329. EXTRACT. * * * That from and after the adjournment of the next session of the several territorial legislatures the council of each of the territories of the United States shall not exceed twelve members, and the house of representatives of each shall not exceed twenty-four members, and the members of each branch of the said several legislatures shall receive a compensation of four dollars per day each during the sessions provided by law, and shall receive such mileage as the law provides; and the

Districts.

Proviso

president of the council and the speaker of the house of representatives shall each receive six dollars per day for the same time. And the several legislatures at their next sessions are directed to divide their respective territories into as many council and representative districts as they desire, which districts shall be as nearly equal as practicable, taking into consideration population, except "Indians not taxed:" *Provided*, The number of council districts shall not exceed twelve, and the representative districts shall not exceed twenty-four in any one of said territories, and all parts of sections eighteen hundred and forty-seven, eighteen hundred and forty-nine, eighteen hundred and fifty-three, and nineteen hundred and twenty-two of the revised statutes of the United States in conflict with the provisions herein are repealed.

Officers of legislatures
Salaries.

Secretary's fees.

Printing.

That the subordinate officers of each branch of said territorial legislatures shall consist of one chief clerk, who shall receive a compensation of six dollars per day; one enrolling and engrossing clerk, at five dollars per day; sergeant-at-arms and doorkeeper, at five dollars per day; one messenger and watchman, at four dollars per day each; and one chaplain, at one dollar and fifty cents per day. Said sums shall be paid only during the sessions of said legislatures; and no greater number of officers or charges per diem shall be paid or allowed by the United States to any territory. And section eighteen hundred and sixty one of the revised statutes is hereby repealed, and this substituted in lieu thereof: *Provided*, That for the performance of all official duties imposed by the territorial legislatures, and not provided for in the organic act, the secretaries of the territories, respectively, shall be allowed such fees as may be fixed by the territorial legislatures. And in no case shall the expenditures for public printing in any of the territories exceed the sum of two thousand five hundred dollars for any one year.

Utah and Northern Ry. Company.
20 June, 1878

Right of way modified.

IBID. CHAP. 362. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the right of way through the public lands of the United States and other privileges heretofore granted by law to the Utah Northern railroad company are hereby modified and regranted so as to enable the Utah Northern railway company and its assigns to build their road by the way of Marsh valley, Portneuf river, and Snake river valley, instead of by the way of Soda Springs and Snake river valley as originally granted.

SEC. 2. And said company is hereby made a railway corporation in the territories of Utah, Idaho, and Montana, under the same conditions and limitations and with the same rights and privileges that it now has and enjoys under its articles of incorporation: *Provided*, That said corporation shall at all times hereafter be subject to all the laws and regulations in relation to railroads of the United States or of any territory or state through which it may pass. And suits against said corporation may be instituted in the courts of said territories or either of them having jurisdiction by the laws of such territory.

To be a corporation in Utah, Idaho, and Montana

Proviso

Suits

SEC. 3. Congress may at any time add to, alter, amend, or repeal this act.

Amendments.

FORTY-SIXTH CONGRESS. SESSION II. CHAP. 56.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when, from any cause, there shall be a vacancy in the office of justice of the peace in any of the territories of the United State, it shall be lawful to fill such vacancy by appointment or election, in such manner as has been or may be provided by the governor and legislative assembly of such territory: *Provided*, That such appointee, or person elected to fill such vacancy, shall hold office only untill his successor shall be regularly elected and qualified as provided by law.

April 16, 1880

Justices of the peace in the territories — filling vacancies in office of

Proviso.

IBID. CHAP. 235. EXTRACT. * * * * * *

That the legislative assemblies of the several territories of the United States may make such provisions for the care and custody of such persons as may be convicted of crime under the laws of such territory as they shall deem proper; and for that purpose may authorize and contract for the care and custody of such convicts in any other territory or state; and provide that such person or persons may be sentenced to confinement accordingly in such other territory or state; and all existing legislative enactments of any of the territories for that purpose are hereby legalized: *Provided*, That the expense of keeping such prisoners shall be borne by the respective territories, and no part thereof shall be borne by the United States.

Care and custody of convicts of any territory contracted for in any other territory or state

Proviso.

[PUBLIC—NO. 6.]

AN ACT amending section 1852 of the revised statutes of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1852, be and the same hereby is, so amended as to read as follows:

Length of sessions of legislative assemblies of the several territories limited to sixty days.

SEC. 1852. The sessions of the legislative assemblies of the several territories of the United States shall be limited to sixty days' duration.

Approved December 23, 1880.

Expenses for printing for the several territories limited to $3 750 for each session

FORTY-SEVENTH CONGRESS. SESSION I. CHAP. 389. EXTRACT. * * * * * And hereafter no expense for printing exceeding three thousand seven hundred and fifty dollars, including printing laws, journals, bills; and necessary printing of the same nature, shall be incurred for any session of the legislature of any of the territories.

Approved August 5, 1882.

[PUBLIC—NO. 101.]

AN ACT regulating appeals from the supreme court of the District of Columbia and the supreme courts of the several territories.

Limiting the amount of claim for which appeals can be taken from the supreme court of any of the territories to the supreme court of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no appeal or writ of error shall hereafter be allowed from any judgment or decree in any suit at law or in equity in the supreme court of the District of Columbia, or in the supreme court of any of the territories of the United States, unless the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars.

Exceptions.

SEC. 3. That the preceding section shall not apply to any case wherein is involved the validity of any patent or copy-right or in which is drawn in question the validity of a treaty or statute of or an authority exercised under the United States; but in all such cases an appeal or writ of error may be brought without regard to the sum or value in dispute.

Approved March 3, 1885.

CHAP. 758—An act relating to the supreme court of Montana Territory, and providing for the establishment of judicial districts in said territory.

July 10, 1886.

Montana territory.

Additional justice in supreme court of.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter the supreme court of the Territory of Montana shall consist of a chief justice and three associate justices; three of whom shall constitute a quorum; they shall hold their offices for four years, and until their successors are appointed and qualified; they shall hold a term annually at the seat of government of said territory, *Provided, however*, That no justice shall act as a member of the supreme court of said Territory of Montana in any action or proceeding brought to such court by writ of error, bill of exceptions, or appeal from a decision, judgment, or decree rendered by him as judge of a district court.

Proviso

No judge to sit in appeal from his decision.

SEC. 2. That said territory shall be divided into four judicial districts, and a district court shall be held in each district of the territory by one of the justices of the supreme court, at such time and place as may be prescribed by law.

Territory to be divided into four districts

SEC. 3. That all offenses committed before the passage of this act shall be prosecuted, tried and determined in the same manner and with the same effect as if this act had not been passed.

Offenses committed prior to act to be tried in present courts.

Approved, July 10, 1886.

CHAP 132.—An act authorizing the Secretary of War to adjust and settle the account for arms, ammunition, and accouterments between the Territoty of Montana and the United States

Feb. 17, 1887.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the secretary of war be, and he is hereby, authorized and directed to adjust and balance the account for arms, ammunition, and accouterments between the Territory of Montana and the government of the United States, by crediting said territory with the balance now standing against it on said account.

Montana to be credited amount due on ordnance account.

Approved, February 17, 1887.

COMPILED STATUTES

OF THE

TERRITORY OF MONTANA,

IN FIVE DIVISIONS,

CONSISTING OF

CODE OF CIVIL PROCEDURE,
PROBATE PRACTICE ACT,
CRIMINAL PRACTICE ACT,
CRIMINAL LAWS,
AND GENERAL LAWS.

PURSUANT TO

"AN ACT

To provide for compiling, editing and indexing the General Laws of the Territory of Montana, in force at the adjournment of the Fifteenth regular Session of the Legislative Assembly," approved March 10, 1887.

JOURNAL PUBLISHING CO.,
PUBLIC PRINTERS,
HELENA, MONT.

AN ACT

To compile and arrange the General Laws of the Territory of Montana in force at the commencement of the Fifteenth Regular Session of the Legislative Assembly, on the tenth day of January, A D 1887

Be it enacted by the Legislative Assembly of the Territory of Montana:

FIRST DIVISION.

Code of Civil Procedure.

TITLE I.

OF THE FORM OF CIVIL ACTIONS.

CHAPTER I.

Sec. 1. One form of action in Law and Equity.
Sec. 2. Names of parties to an action.
Sec. 3. Facts not in issue, how tried.

SECTION 1. There shall be in this territory but one form of civil action for the enforcement or protection of private rights, and the redress or prevention of private wrongs, which shall be the same at law and in equity.

One form of civil action

SEC. 2. In such action the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

Parties.

SEC. 3. When a question of fact, not put in issue by the pleadings, is to be tried by a jury an order for the trial may be made, stating distinctly and plainly the question of fact to be tried; and such order shall be the only authority necessary for a trial.

Trial by jury of fact not put in issue by pleadings

TITLE II.—CHAPTER I.

OF THE PARTIES TO CIVIL ACTIONS.

Sec. 4. Real party in interest to sue.
Sec. 5. Assignments not to prejudice defence.
Sec. 6. Executor, administrator or trustee may sue alone.
Sec. 7. Married woman may sue alone, when.
Sec. 8. Wife may defend, when.
Sec. 9. Infant to appear by guardian.
Sec. 10. How and when guardian to be appointed.
Sec. 11. Unmarried woman may sue for her seduction.
Sec. 12. Parent or guardian may sue for seduction of daughter or ward.
Sec. 13. Injury or death of child or ward.
Sec. 14. Heirs and personal representatives may maintain action for damages by death of deceased.
Sec. 15. Who may be joined as plaintiffs.
Sec. 16. Who may be joined as defendants.
Sec. 17. Actions for the possession of real property.
Sec. 18. Who may unite to determine title to real estate.
Sec. 19. Joinder of parties, plaintiff or defendant.
Sec. 20. Joinder of parties severally liable.
Sec. 21. Joint tenants, tenants in common or coparceners may unite or sue severally.
Sec. 22. Actions not to abate, substitution of parties.
Sec. 23. Court may order another defendant substituted.
Sec. 24. How and when a person having an interest may intervene.
Sec. 25. Of actions against copartners.
Sec. 26. When third parties brought in.
Sec. 27. When and how third party to interplead.

Action; in whose name prosecuted.

SEC. 4. Every action shall be prosecuted in the name of the real party in interest, except as otherwise provided in this act.

Action; in case of assignment.

SEC. 5. In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defense existing at the time of, or before notice of the assignment; but this section shall not apply to a negotiable promissory note or bill of exchange, transferred in good faith, and upon good consideration before due.

Executor, etc. may sue alone, trustee of express trust defined.

SEC. 6. An executor or administrator, or trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person or persons for whose benefit the action is prosecuted. A trustee of an express trust, within the meaning of this section, shall be construed to include a person with whom or in whose name a contract is made for the benefit of another.

Married woman may sue or be sued as if sole.

SEC. 7. A married woman may sue and be sued in the same manner as if she were sole.

NOTE.—Sec. 7 is from act of March 7, 1887.

Wife may defend for her own and husband's right.

SEC. 8. If a husband and wife be sued together the wife may defend for her own right; and if the husband neglect to defend, she may defend for his right also.

Infant to appear by guardian.

SEC. 9. When an infant is a party he shall appear by guardian, who may be appointed by the court in which the action was prosecuted, or by a judge thereof, or a probate judge.

SEC. 10. The guardian shall be appointed as follows:

Appointment of guardian

First. When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years, or if under that age upon the application of a relative or friend of the infant.

Second. When the infant is defendant, upon the application of the infant, if he be of the age of fourteen years, and apply within ten days after the service of the summons; if he be under the age of fourteen, or neglect so to apply, then upon the application of any other party to the action, or of a relative or friend of the infant.

Unmarried female may prosecute for her seduction

SEC. 11. An unmarried female may prosecute, as plaintiff, an action for her own seduction, and may recover therein such damages, pecuniary or exemplary, as are assessed in her favor.

Who may prosecute for seduction of daughter or ward

SEC. 12. A father, or in case of his death or desertion, the mother may prosecute as plaintiff, for the seduction of the daughter, and the guardian for the seduction of the ward, though the daughter or ward be not living with or in the service of the plaintiff at the time of the seduction or afterwards, and there be no loss of service.

Who may maintain action for injury or death of a child.

SEC. 13. A father, or in case of his death or desertion of his family, the mother, may maintain an action for the injury or death of a child; and a guardian for the injury or death of his ward.

Who may maintain action for damages for the death of person, not a minor.

SEC. 14. Where the death of a person not being a minor is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death, or if such person be employed by another person, who is responsible for his action, then also against such other person. In every action under this and the preceding section, such damages may be given as under all the circumstances of the case may be just.

Persons in interest, may be joined as plaintiffs.

SEC. 15. All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except when otherwise provided in this act.

Who may be made defendants.

SEC. 16. Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein. And in an action to determine the title or right of possession to real property which, at the time of the commencement of the action, is in the possession of a tenant, the landlord may be joined as a party defendant.

Defendants in action by person out of possession.

SEC. 17. In an action brought by a person out of possession of real property, to determine an adverse claim of an interest or estate therein, the person making such adverse claim and persons in possession may join as defendants, and if the judgment be for the plaintiff, he may have a writ for the possession of the premises as against the defendants in action against whom the judgment is passed.

Persons claiming under common source of title may unite in action against claimants.

SEC. 18. Any two or more persons claiming any estate or interest in lands under a common source of title, whether holding as tenants in common, joint tenants, coparceners, or in severalty, may unite in action against any person claiming an adverse estate or interest therein, for the purpose of determining such adverse claim, or of establishing such common source of title, or of declaring the same to be held in trust, or of removing a cloud upon the same.

Parties united in interest to be joined as plaintiffs or defendants. Party not consenting may be made defendant If question of general or common interest one may sue or defend for all.

SEC. 19. Of the parties to the action, those who are united in interest shall be joined as plaintiffs or defendants; but if the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest of many persons, or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

In certain cases persons severally liable may, all or any, be included in same action.

SEC. 20. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, and sureties on the same or separate instruments, may all or any of them be included in the same action at the option of the plaintiff.

Persons jointly interested may jointly or severally commence or defend action

SEC. 21. All persons holding as tenants in common, joint tenants, or coparceners, or any number less than all, may jointly or severally commence or defend any civil action or proceeding for the enforcement or protection of the rights of such party.

13th session p. 98.

Action shall not abate by disability of party or transfer of interest.

SEC. 22. An action, or cause of action, or defense, shall not abate by the death, marriage, or other disability of a party, or by the transfer of any interest therein, but shall, in all cases, where a cause of action or defense arose in favor of such party prior to his death, marriage or other disability or transfer of interest therein, survive, and be maintained by his representatives or successors in interest; and in case such action has not been begun or defense interposed, the action may be begun or defense set up in the name of his representatives or successors in interest; and in case the action has been begun or defense set up, the courts shall, on motion, allow the action or proceeding to be continued by or against his representatives or successors in interest. In case of any transfer of in-interest, the action or proceeding may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action or proceeding.

NOTE —Sec. 22, act of March 7th, 1883

Defendant may in certain cases have party substituted in his place, and be discharged from liability.

SEC. 23. A defendant against whom an action is pending upon a contract, or for specific, real or personal property, may at any time, before answer, upon affidavit that a person not a party to the action, and without collusion with him, makes against him a demand for the same debt or property, upon due notice to such person and the adverse party, apply to the court for an order to substitute such person in his place, and discharge him from liability to either party, on his depositing in court the amount of the debt, or delivering the property or its value to such person as the court may direct; and the court may, in its discretion make the order.

Persons interested may intervene before trial.

SEC. 24. Any person may, before the trial, intervene in an action or proceeding, who has an interest in the matter of litigation in the success of either of the parties, or an interest against both. An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and defendant, and is made by complaint, setting forth the grounds upon which the intervention rests, filed by leave of the court, and served upon the parties to the action or proceedings who have not appeared, and upon the attorneys of the parties who have appeared, who may answer or demur to it as if it were an original complaint.

Suit and judgment against persons associated in same business.

SEC. 25. Where two or more persons associated in the same business transact such business under a common name, whether it comprise the names of such persons or not, the associates may be sued by such common name, the summons in such case being served on one or more of the associates; and the judgment in the action shall bind the joint property of all the associates in the same manner as if all had been named defendants, and had been sued upon their joint liability.

Other parties may be brought in.

SEC. 26. The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court shall order them to be brought in.

Person not a party may be brought in upon his application.

SEC. 27. When in a civil action, a person not a party thereto, but having an interest in the subject thereof, makes application to the court to be made a party, it may order him to be brought in, and upon due service upon the adverse party of his complaint, or answer, the same proceedings shall be had as if he had been an original party to the action.

TITLE III. CHAPTER I.

OF THE TIME OF COMMENCING ACTIONS.

Sec. 28. Civil actions only to be commenced within certain limits.

Actions to be commenced within periods prescribed by this title

SEC. 28. Civil actions can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued, except where, in special cases, a different limitation is prescribed by statute.

CHAPTER II.

OF THE TIME OF COMMENCING ACTIONS CONCERNING REAL PROPERTY.

Sec. 29. Action for the recovery of real property.

Sec. 30. Action for the recovery of interest in real property.

Sec. 31. When entry upon real estate deemed sufficient.

Sec. 32. When possession presumed to be established.

Sec. 33. Where property deemed to be held adversely.

Sec. 34. What constitutes adverse possession.

Sec. 35. As to adverse possession by occupancy only.

Sec. 36. What constitutes adverse possession when title not founded on a written instrument.

Sec. 37. Extent that possession of tenant is deemed possession of the landlord.

Sec. 38. Right of posssesion not impaired by the death of party in possession.

Sec. 39. Time during which certain disabilities continue not to be counted as portion of limitation.

Sec. 40. Limitation as to mining property.

When action for recovery of real property or possession thereof can be maintained.

SEC. 29. No action for the recovery of real property, or for the recovery of the possession thereof, can be maintained unless it appear that the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the property in question within five years before the commencement of the action.

When cause of action or defense, arising out of title to real property or rents or profits can be effectual.

SEC. 30. No cause of action or defense to an action, arising out of the title to real property, or to rents or profits out of the same, can be effectual unless it appear that the person prosecuting the action, or making the defense, or under whose title the action is prosecuted, or the defense is made, or the ancestor, predecessor, or grantor of such person was seized or possessed of the premises in question within five years before the commencement of the act in respect to which such action is prosecuted or defense made.

Time within which action must be commenced after entry upon real estate.

SEC. 31. No entry upon real estate is deemed sufficient or valid, as a claim, unless an action be commenced thereupon within one year after making such entry, and within five years from the right to make it descended or accrued.

Owner of legal title presumed to be possessed of real estate and occupation by another presumed to be subject to legal title. Exception.

SEC. 32. In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the property is presumed to have been possessed thereof within the time required by law, and the occupation of the property by any other person is deemed to have been under and in subordination to the legal title, unless it appear that the property has been held and possessed adversely to such legal title for five years before the commencement of the action.

Adverse possession.

SEC. 33. When it appears that the occupant, or those under whom he claims, entered into possesion of the property under claim of title, exclusive of other right, founding such claim upon a written instrument as being a conveyance of the property in question, or upon the decree or judgment of a competent court, and that there had been a continued occupation and possession of the property included in such instrument, decree, or judgment, or of some part of the property under such claim, for five years, the property so included is deemed to have been held adversely, except that, when it consists of a tract divided into lots, the possession of one lot is not deemed a possession of any other lot of the same tract.

When land is deemed to have been possessed and occupied under written instrument, judgment or decree.

SEC. 34. For the purpose of constituting adverse possession by any person claiming a title founded upon a written instrument, or a judgment, or decree, land is deemed to have been possessed and occupied in the following cases:

First. Where it has been usually cultivated or improved.

Second. Where it has been protected by a substantial enclosure.

Third. Where, although not enclosed, it has been used for the supply of fuel, or of fencing timber for the purpose of husbandry, or for pasturage, or for the ordinary use of the occupant.

Fourth. Where a known farm or single lot has been partly improved, the portion of such farm or lot that may have been left not cleared, or not enclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

Limit of claim.

SEC. 35. Where it appears that there has been an actual continued occupation of land, under a claim of title exclusive of any other right, but not founded upon a written instrument, judgment, or decree, the land so actually occupied, and no other, is deemed to have been held adversely.

Adverse possession under claim not founded upon written instrument, judgment or decree

SEC. 36. For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument, judgment or decree, land is deemed to have been possessed and occupied in the following cases only:

First. Where it has been protected by a substantial enclosure.

Second. Where it has been usually cultivated or improved.

Possession of tenant

SEC. 37. When the relation of landlord and tenant has existed between any persons, the possession of the tenant is deemed the possession of the landlord until the expiration of five years from the termination of the tenancy, or where there has been no written lease, until the expiration of five years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title, or may have claimed to hold adversely to his landlord; but such presumptions cannot be made after the periods herein limited.

Right not affected by descent cast.

SEC. 38. The right of a person to the possession of real property is not impaired or affected by a descent cast in consequence of the death of a person in possession of such property.

Time during which disability continues not deemed part of time limited for commencement of action.

SEC. 39. If a person entitled to commence an action for the recovery of real property, or for the recovery of possession thereof, or to make any entry or defense founded on the title to real property, or to rents or services out of the same, be at the time such title descends or accrues, either, first, within the age of majority; or, second, insane; or, third, imprisoned on a criminal charge, or in execution upon conviction of a criminal offense, for a term less than for life; or, fourth, a married woman, and her husband be a necessary party with her in commencing such action or making such entry or defense—the time during which such disability continues is not deemed any portion of the time in this chapter limited for the commencement of such action, or the making of such entry or defense; but such action may be commenced, or entry or defense made, within the period of five years after such disability shall cease, or after the death of the the person entitled who shall die under such disability. but such action shall not be commenced, or entry or defense made, after that period.

When action for mining claim maintained.

SEC. 40. No action for the recovery of mining claims (lode claims excepted) or for the recovery of possession thereof, shall be maintained, unless it appear that the plaintiff or his assigns was seized or possessed of such mining claims within one year before the commencement of such action.

CHAPTER III.

OF THE TIME OF COMMENCING ACTIONS OTHER THAN FOR THE RECOVERY OF REAL PROPERTY.

Sec. 41. On judgments and written contracts.
Sec. 42. Limitation in cases of trespass, fraud, etc
Sec. 43. Against public officer.
Sec. 44. On parole contract, account, libel, etc.
Sec. 45. Actions for penalties, and against officer for an escape.
Sec. 46. No limitation to recover money deposited with a bank.
Sec. 47. Limitation of actions not specially provided for.
Sec. 48. Computation of time limited in actions on account.
Sec. 49. When the territory is a party.
Sec. 50. Absence from territory not included in time limited.
Sec. 51. In case of the reversal of a judgment
Sec. 52. Injunction or statute stops limitation.
Sec. 53. Effect of new promise on limitation.
Sec. 54. Effect of part payment on limitation.
Sec. 55. Causes of action arising out of the territory

Limitation; judgment, decree, written instrument.

SEC. 41. Actions other than those for the recovery of real property, as follows: 1, an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, shall be commenced within six years; 2, an action upon any contract, obligation or liability, founded upon any instrument in writing—shall be commenced within ~~six~~ 8 years.

Limitation; waste or trespass, personal property, relief for fraud or mistake

SEC. 42. 1, an action for waste or trespass upon real property; 2, an action upon a liability created by a statute, other than a penalty of forfeiture; 3, an action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property; 4, an action for relief on the ground of fraud or mistake (the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting fraud or mistake)—shall be commenced within two years.

Limitation; action against officer

SEC. 43. An action against a sheriff, coroner, or constable, upon the liability incurred by the doing of an act in official capacity and in virtue of his office, or by the omission of an official duty, shall be commenced within two years.

12th ses p. 8

Limitation, liability not founded upon written instrument, open account

SEC. 44. An action upon a contract, account, or promise, whether expressed or implied, which is not founded upon a written instrument signed by the party chargeable therewith, shall be commenced within three years from the time the cause of action accrued. If the action be upon an open and running account, the computation of time shall be from the date of the last item thereof.

12th ses p 8.

Limitation; penalty or forfeiture, escape of prisoner, libel, other wrongs

SEC. 45. In an action for a penalty or forfeiture, when the action is given to an individual, or to an individual and the territory, except when the statute imposing it prescribes a different limitation.

Second.—An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

Third.—Actions for libel, assault, assault and battery, and false imprisonment, shall be commenced within one year from the time the cause of action accrued.

NOTE —Sections 44 and 45 from act of Feb. 23, 1881.

No limitation in certain cases

SEC. 46. There shall be no limitation upon the right to maintain an action for the recovery of money or other property deposited with any bank, banker, trust company, or savings and loan society.

Limitation; other actions for relief.

SEC. 47. An action for relief not hereinbefore provided for must be commenced within three years after the cause of action shall have accrued.

Cause of action accrues from time of last item in mutual account.

SEC. 48. In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side.

Applies to territory.

SEC. 49. The limitations prescribed in this act shall apply to actions brought in the name of the territory, or for the benefit of the territory, in the same manner as to actions brought by private parties.

Time of party's absence from territory not part of time herein limited.

SEC. 50. If when the cause of action shall accrue against a person when he is out of the territory, the action may be commenced within the time herein limited, after his return to the territory; and if after the cause of action shall have accrued he depart from this territory, the time of his absence shall not be a part of the time limited for the commencement of the action.

Right of plaintiff when judgment reversed on appeal.

SEC. 51. If the action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be rendered [reversed] on error or appeal, the plaintiff, or if he die and the cause of action survive, his heirs or representatives, may commence a new action within one year after the reversal.

Injunction or prohibition stays operation of statute.

SEC. 52. When the commencement of an action is stayed by injunction, or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action.

Revivor by acknowledgement or promise

SEC. 53. No acknowledgement or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this act, unless the same is contained in some writing signed by the party to be charged thereby; but this act shall not alter the effect of any payment of principal or interest.

Revivor by past payment.

SEC. 54. Whenever any payment of principal or interest has been or shall be made upon an existing contract, whether it be bill of exchange, promissory note, bond, or other evidence of indebtedness, if such payment shall be made after the same shall have become due, the limitation shall commence from the time the last payment was made.

Action barred by law of other jurisdiction.

SEC. 55. When the cause of action shall have arisen in any other state or territory of the United States, or in a foreign country, and by the laws thereof an action cannot be maintained against a person by reason of the lapse of time, no action thereon shall be commenced against him in this territory.

TITLE IV.—CHAPTER I.

OF THE PLACE OF TRIAL OF CIVIL ACTIONS.

Sec. 56. Actions to be tried in the county where subject of action is situated.
Sec. 57. Actions to be tried in the county where cause of action arose.
Sec. 58. Actions against counties.
Sec. 59. Actions in all other cases.
Sec. 60. Actions arising in a county attached to another for judicial purposes.
Sec. 61. Actions not to abate if brought in wrong county.
Sec. 62. Venue, how changed.
Sec. 63. Venue, how changed when court is disqualified.
Sec. 64. Papers and pleadings to be transmitted when change of venue granted.
Sec. 65. Clerk to certify and transmit judgment affecting real estate in another county.

Venue in actions relating to real property.

SEC. 56. Except when otherwise provided, actions for the following causes shall be tried in the county in which the subject of the action, or some part thereof, is situated, subject to the power of the court to change the place of trial, as provided in this act:

First. For the recovery of real property, or of an interest therein, or for the determination in any form of such right or interest, and for injuries to real property.

Second. For the partition of real property.

Third. For the foreclosure of a mortgage on real property: *Provided*, That where such real property is situated partly in one county and partly in another, the plaintiff may select either of said counties, and the county so selected shall be the proper county for the trial of any or all of such actions as are mentioned in this section.

Venue in actions for penalty or forfeiture and against public officer.

SEC. 57. Actions for the following causes shall be tried in the county where the cause, or some part thereof, arose, subject to the like power of the court to change the place of trial:

First. For the recovery of a penalty or forfeiture imposed by statute, except that when it is imposed for an offense committed on a lake, river, or other stream of water situated in two or more counties, the action may be brought in any county bordering on such lake, river, or stream, and opposite to the place where the offense was committed.

Second. Against a public officer or person especially appointed to execute his duties, for an act done by him in virtue of his office, or against a person who, by his command, or in his aid, does anything touching the duties of such officer.

Venue in actions against counties

SEC. 58. Actions against counties may be commenced and tried in any county in the judicial district in which such county is situated, unless such actions are between counties, in which case they may be commenced and tried in any county not a party thereto.

Venue in other cases.

SEC. 59. In all other cases, the action shall be tried in the county in which the defendants, or any of them, may reside at the commencement of the action, or where the plaintiff resides, and the defendants, or any of them, may be found; or if none of the defendants reside in the territory, or, if residing in the territory, the county in which they so reside be unknown to the plaintiff, the same may be tried in any county which the plaintiff may designate in his complaint; and if any defendant or defendants may be about to depart from the territory, such action may be tried in any county where either of the parties may reside, or service be had. Actions upon contracts may be tried in the county in which the contract was to be performed; and actions for torts, in the county where the tort was committed; subject, however, to the power of the court to change the place of trial as provided in this act.

Venue when one county is attached to another for judicial purposes

SEC. 60. When a county shall be attached to another county for judicial purposes, actions arising or triable therein, of which a district court shall have exclusive jurisdiction, shall be commenced and tried in the county to which such county may be so attached.

Where action is not commenced in proper county.

SEC. 61. If the county in which the action is commenced is not the proper county for the trial thereof, the action may, notwithstanding, be tried therein, unless the defendant, at the time he appears and answers or demurs, files an affidavit of merits, and demands, in writing, that the trial be had in the proper county.

When court may change venue

SEC. 62. The court may, on good cause shown, change the place of trial in the following cases:

First. When the county designated in the complaint is not the proper county.

Second. When there is reason to believe that an impartial trial cannot be had therein.

Third. When the convenience of witnesses and the ends of justice would be promoted by the change.

Fourth. When, from any cause, the judge is disqualified from acting in the action: *Provided*, That the court shall not change the place of trial for disqualification of the district judge, in any case where the judge of another district court will appear and try the action.

Change of venue when judge or justice is disqualified.

SEC. 63. If an action or proceeding is commenced or pending in a court, and the judge or justice thereof is disqualified from acting as such, or if, for any cause, the court orders the place of trial to be changed, it must be transferred for trial to a court the parties may agree upon by stipulation in writing, or made in open court, and entered in the minutes; or if they do not so agree, then to the nearest court where the like objection or cause for making the order does not exist, as follows:

First. If in the district court, to another district court.

Second. If in the probate court, to some other probate court.

Third. If in a justice's court, to another justice's court in the same county.

Proceedings when change of venue is made

SEC. 64. When an order is made, transferring an action or proceeding for trial, the clerk of the court or justice of the peace must transmit the pleading and papers therein to the clerk or justice of the court to which it is transferred. The costs and fees thereof, and of filing the papers anew, must be paid by the party at whose instance the order was made. The court to which an action or proceeding is transferred has and exercises over the same the like jurisdiction as if it had been originally commenced therein.

Duty of clerk after judgment where venue has been changed

SEC. 65. When an action or proceeding affecting the title to or possession of real estate has been brought in or transferred to any court of a county other than the county in which the real estate, or some portion of it is situated, the clerk of such court must, after final judgment thereon, certify, under his seal of office, and transmit to the corresponding court of the county in which the real estate affected by the action is situated, a copy of the judgment. The clerk receiving such copy must file, docket, and record the judgment in the records of the court, briefly designating it as a judgment transferred from —— court (naming the proper court).

TITLE V.—CHAPTER I.

OF THE MANNER OF COMMENCING CIVIL ACTIONS.

Sec. 66. Civil actions, how commenced.
Sec. 67. Complaint to be endorsed, when and how summons issued or waived.
Sec. 68. Summons, how directed, signed and issued, and contents thereof.
Sec. 69. Alias summons, when issued.
Sec. 70. Notice of lis pendens.
Sec. 71. Summons, by whom served and how returned.
Sec. 72. Summons, how served.
Sec. 73. Summons, how served on non-residents, corporations, and when defendant cannot be found.
Sec. 74. Summons, where published; deposit in postoffice.
Sec. 75. Publication, service by, how obtained.
Sec. 76. Service of summons by mail, &c., how made.
Sec. 77. When service made on one or more of two or more joint defendants, how to proceed.
Sec. 78. Proof of service of summons.
Sec. 79. Time and place of service to be stated.
Sec. 80. Jurisdiction, when court deemed to have acquired.

Action; how commenced.

Sec. 66. Civil actions in the courts of this territory are commenced by filing a complaint.

Endorsement on complaint; issuance of summons; appearance

Sec. 67. The clerk must endorse on the complaint the day, month, and year that it is filed, and at any time within one year thereafter the plaintiff may have a summons issued, and if the action be brought against two or more defendants who reside in different counties, may have a summons issued for each of such counties at the same time. But at any time within the year after the complaint is filed, the defendant may, in writing or by appearing and answering or demurring, waive the issuing of summons, or if the action be brought upon a joint contract of two or more defendants, and one of them has appeared within the year, the other or others may be served or appear after the year at any time before trial.

Contents of summons.

Sec. 68. The summons must be directed to the defendant, signed by the clerk, and issued under the seal of the court, and must contain:

First. The names of the parties to the action, the court in which it is brought, and the county in which the complaint is filed.

Second. The cause and general nature of the action.

Third. A direction that the defendant appear and answer the complaint within ten days, if the summons is served within the county in which the action is brought; within twenty days, if served out of the county, but in the district in which the action is brought; and within forty days, if served elsewhere.

Fourth. In an action arising on contract, for the recovery of money or damages only, a notice that unless the defendant so appears and answers, the plaintiff will take judgment for the sum demanded in the complaint (stating it).

Fifth. In other actions, a notice that unless defendant so appears and answers, the plaintiff will apply to the court for the relief demanded in the complaint.

The name of the plaintiff's attorney must be endorsed on the summons.

Alias summons.

SEC. 69. If the summons is returned without being served on any or all of the defendants, or if it has been lost, the clerk, upon the demand of the plaintiff, may issue an *alias* summons, in the same form as the original.

Lis pendens.

SEC. 70. In an action affecting the title or the right of possession of real property, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterwards, may record in the office of the recorder of the county in which the property is situated, a notice of the pendency of the action, containing the names of the parties and the object of the action or defense, and a description of the property in that county affected thereby. From the time of filing such notice for record only shall a purchaser or incumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action, and only of its pendency against parties designated by their real names.

Summons; by whom served.

SEC. 71. The summons may be served by the sheriff of the county where the defendant is found, or by any other person over the age of eighteen, not a party to the action. When the summons is served by the sheriff it must be returned, with his certificate of its service, and of the service of any copy of the complaint, where such copy is served, to the office of the clerk from which it issued. When it is served by any other person it must be returned to the same place, with an affidavit of such person of its service, and of the service of a copy of the complaint, where such copy is served.

Service of summons

R. S, p. 52

12th ses p 9.

SEC. 72. The summons must be served by delivering a copy thereof, as follows:

First. If the suit is against a corporation formed under the laws of this territory, to the president or other head of the corporation, secretary, cashier, or managing agent thereof.

Second. If the suit is against a foreign corporation, to the president, secretary, or managing agent within this territory, or to a person designated for the purpose by a writing under the seal of such corporation and the signature of its president, vice-president, or other acting head, accompanied with the written consent of the person designated, and filed in the office of the secretary of the territory. The designation must specify a place of residence of the person so designated, and shall remain in force until the filing in the same office of a written revocation thereof, or of the consent, executed in like manner; but the person so designated may from time to time change the place of his residence to some other place in the territory, by a writing executed by him, and filed in like manner An exemplified copy of a designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof, and conclusive evidence of the authority of the officer executing it. If neither of the officers above named, or a person so designated, can after due diligence, be found within the territory, and the corporation has property within this territory, service may be made by publication of summons as hereinafter provided.

R S., p. 53

Third. If against a minor, under the age of fourteen years, residing within this territory, to such minor personally, and also to his father, mother, or guardian; or if there be none within this territory, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed.

R. S., p. 53.

Fourth. If against a person residing within this territory, who has been judicially declared of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, to such person, and also to his guardian.

Fifth. If against a county, city, or town, to the president of the board of supervisors, president of the council or trustees, or other head of the legislative department thereof. R S, p 53

Sixth. In all other cases to the defendant personally. R S, p. 53.

NOTE—The second sub-division of Section 72 from act of February 23d, 1881

SEC. 73. When the person on whom the service of a summons is to be made resides out of the territory or has departed from the territory or cannot, after due diligence, be found within the territory, or conceals himself to avoid the service of the summons, or when the defendant is a foreign corporation or corporations, having no managing or business agent, cashier, secretary or other officer within the territory, and an affidavit stating any of these facts is filed with the clerk of the court in which the action is brought, and such affidavit also states that a cause of action exists against the defendant in respect to whom the service of the summons is to be made and that he or it is a necessary or proper party to the action, the clerk of the court in which the action is commenced shall cause the service of the summons to be made by publication thereof.

Act of March 9, 1887

Publication of summons.

NOTE—Section 73 is from act of March 9, 1887.

SEC. 74. Such publication of the summons shall be made in a newspaper published in the county, but if there be no newspaper published in such county then such publication shall be made in a newspaper published in any adjoining county in the same judicial district in four numbers thereof, which shall be published in successive weeks; *Provided*, That in all cases where an order of publication is made, personal service of the summons and a copy of the complaint shall be deemed a compliance with said order and the provisions of this act, and when proof of such service is made the defendant shall be deemed constructively summoned. In all cases of publication, if the residence of any defendant or agent, cashier or secretary of such corporation is stated in the affidavit mentioned in this act the clerk of the said court shall forthwith deposit in the postoffice a copy of the summons, directed to the persons or agent or officer of such corporation with postage prepaid. The service of the summons shall be complete on the day of the fourth publication thereof, shall be made in said newspaper or on the day the said summons and copy of the [same] shall be personally served on the said defendant.

Act of March 9, 1887

Where summons published; deposit in post office.

NOTE.—Section 74 is from act of March 9th, 1887

13th ses. p 100.

Service of summons on corporation.

SEC. 75. Any corporation doing business in this territory may be served with summons or other process by serving a copy of such process upon the president, secretary, treasurer, or other officer of the corporation, or upon the agent designated by such corporation as the person upon whom service shall be made, as required by law, and if none of the persons above mentioned can be found in the county, then service may be made upon any clerk, superintendent, general agent, cashier, principal director, ticket agent, station keeper, managing agent or other agent, having the management, direction, or control of any property of such corporation. If none of the persons in this section described can be found in the county in which such action is commenced, then service may be made, as provided in this section, upon any of the persons herein described, in any county of this territory.

NOTE.—Section 75 from act of March 8th, 1883.

12th ses p 7.

Transmission of papers by mail.

Prepayment of costs.

SEC. 76. It shall be lawful for the clerk of any court of record in this territory, at the request of a party in any civil action pending in such court, his agent or attorney, to forward by mail any process, summons, or other papers required in the cause, and the sheriff or other officer to whom said papers may be directed, or who shall receive the same for service, shall be entitled to charge mileage only from the point at which such process was received and the point of service; but in such case it shall be lawful for the officer to return the process to the court in like manner as received: *Provided*, That in no case shall the officer receiving papers for service be required to serve the same, unless the person in whose behalf the service is made, his agent or attorney, shall first pay the costs of service upon a demand therefor by the officer; and when process in one county is intended for service in another, it shall be the duty of the clerk to forward the same in like manner, and the sheriff or officer serving the same shall be entitled to like mileage, and no more, and may make like return of the paper.

NOTE.—Section 76 from act of Feb. 23d, 1881.

Service on persons jointly liable.

SEC. 77. When the action is against two or more defendants, jointly or severally liable on a contract, and the summons is served on one or more, but not on all of them, the plaintiff may proceed against the defendant served in the same manner as if they were the only defendants.

Proof of service.

SEC. 78. Proof of the service of summons must be as follows:

First. If served by the sheriff, his certificate thereof.

Second. If by any other person, his affidavit thereof; or,

Third. In case of publication, the affidavit of the printer or his foreman or principal clerk, showing the same; and an affidavit of a deposit of a copy of the summons in the postoffice, if the same has been deposited; or,

Fourth. The written admission of the defendant.

Certificate of service

SEC. 79. In case of service otherwise than by publication, the certificate or affidavit must state the time and place of service.

12th ses. p 9.

Jurisdiction of parties.

SEC. 80. From the time of the service of a summons in a civil action, or the completion of the publication, when the service by publication is ordered, the court is deemed to have acquired jurisdiction of the parties or property, as the case may be, and to have control of all the subsequent proceedings. The voluntary appearance of a defendant is equivalent to personal service of the summons upon him. And in all cases where there has been property of the defendant attached to secure any judgment that may be recovered against him, and there is no personal service on such defendant within the territory, or voluntary appearance, as aforesaid, the judgment and execution shall be against the property attached, as provided in section seventy-three of this chapter.

NOTE—Section 80 from act of Feb. 23d, 1881

TITLE VI.—CHATER I.

OF THE PLEADINGS IN CIVIL ACTIONS.

Sec.. 81. Pleadings defined.
Sec. 82. Forms and sufficiency of pleadings.
Sec. 83. Pleadings of plaintiff and defendant.

Pleadings defined

SEC. 81. The pleadings are the formal allegations by the parties of their respective claims and defenses for the judgment of the court.

Forms

SEC. 82. All the forms of pleadings in civil actions, and the rules by which the sufficiency of the pleadings shall be determined, shall be those prescribed in this act.

Pleadings.

SEC. 83. The only pleadings allowed on the part of the plaintiff are:

First. The complaint;

Second. The demurrer to the answer;

Third. The replication to defendant's answer.

And on the part of the defendant:

First. The demurrer to the complaint;

Second. The answer.

CHAPTER II.

THE COMPLAINT.

Sec. 84. Complaint.
Sec. 85. Complaint must contain.
Sec. 86. Joinder of actions.

Complaint.

SEC. 84. The first pleading on the part of the plaintiff is the complaint.

Contents of complaint.

SEC. 85. The complaint must contain:

First. The title of the action; the name of the court and county in which the action is brought, and the names of the parties to the action.

Second. A statement of the facts constituting the cause of action, in ordinary and concise language.

Third. A demand of the relief which the plaintiff claims. If the recovery of money or damages be demanded, the amount thereof must be stated.

Several causes of action may be united in one complaint.

SEC. 86. The plaintiff may unite several causes of action in same complaint when they arise out of:

First. Contracts, expressed or implied.

Second. Claims to recover specific real property, with or without damages, for the withholding thereof, or for waste committed thereon, and the rents and profits of the same, and for an injunction to stay waste or injury thereto.

Third. Claims to recover specific personal property, with or without damages, for the withholding thereof.

Fourth. Claims against a trustee by virtue of a contract, or by operation of law.

Fifth. Injuries to character.

Sixth. Injuries to person.

Seventh. Injuries to property; but the causes of action so united shall all belong to only one of these classes, and shall affect all the parties to the action, and not require different places of trial, and shall be separately stated; *Provided, however*, That an action for malicious arrest and prosecution, or either of them, may be united with an action for either an injury to character or to person.

CHAPTER III.

THE DEMURRER.

Sec. 87. When defendant may demur.
Sec. 88. When objections deemed waived.

Demurrer.

SEC. 87. The defendant may demur to the complaint within the time required in summons to answer, when it appears upon the face thereof, either:

First. That the court has no jurisdiction of the person of the defendant or the subject of the action; or,

Second. That the plaintiff has no legal capacity to sue; or,

Third. That there is another action pending between the same parties for the same cause; or,

Fourth. That there is a defect or misjoinder of parties, plaintiff or defendant; or,

Fifth. That several causes of action have been improperly united; or,

Sixth. That the complaint does not state facts sufficient to constitute a cause of action; or,

Seventh. That the complaint is ambiguous, unintelligible or uncertain.

The demurrer shall distinctly specify the grounds upon which any of the objections to the complaint are taken; unless it do so, it may be disregarded.

The defendant may demur to the whole complaint, or to one or more of several causes of action stated therein, and answer the residue, or may demur and answer at the same time; *Provided,* That a demurrer and answer shall in no case be filed at the same time to the same cause of action; but demurrers must be disposed of before any other pleadings to the same cause of action shall be filed.

Amended complaint.

If the complaint be amended, a copy of the amendments shall be filed, or the court may, in its discretion, require the complaint as amended to be filed, and a copy of the amendments shall be served upon every defendant to be affected thereby, or upon his attorney if he has appeared by attorney. The defendant shall answer in such time as may be ordered by the court, and judgment by default may be entered upon failure to answer, as in other cases.

Answer.

Objection by answer.

SEC. 88. When any of the matters enumerated in section eighty-seven do not appear upon the face of the complaint, the objection may be taken by answer. If no such objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the court and the objection that the complaint does not state facts sufficient to constitute a cause of action.

CHAPTER IV.

THE ANSWER.

Sec. 89. What answer to contain.
Sec. 90. Counter claims.
Sec. 91. Counter claims, when barred, cross demands.

Answer.

SEC. 89. The answer of the defendant shall contain:

First. A specific denial of the material allegations of the complaint controverted by the defendant.

Second. A statement of any new matter constituting a defense or counter claim.

If the complaint be verified, the denial of each allegation controverted must be specific, and be made positively or according to the information and belief of the defendant.

Counter claim.

SEC. 90. The counter claim mentioned in the last section shall be one existing in favor of the defendant or plaintiff, and against a plaintiff or defendant, between whom a several judgment might be had in the action, arising out of one of the following causes of action:

First. A cause of action arising out of the transaction set forth in the complaint or answer as the foundation of the plaintiff's claim or defendant's defense, or connected with the subject of the action.

Second. In an action arising upon contract, any other cause of action arising also upon contract, and existing at the commencement of the action.

Failure to set up counter claim.

SEC. 91. If the defendant omit to set up a counter claim in the cases mentioned in the first sub-division of the last section, neither he nor his assignee can afterwards maintain an action against the plaintiff therefor.

Cross demands.

When cross demands have existed between persons under such circumstances that if one had brought an action against the other a counter claim could have been set up, neither shall be deprived of the benefit thereof by the assignment or death of the other, but the two demands shall be deemed compensated so far as they equal each other.

Several defenses

The defendant may set forth, by answer, as many defenses and counter claims as he may have; they shall each be separately stated, and the several defenses shall refer to the causes of action which they are intended to answer in a manner by which they may be intelligibly distinguished.

CHAPTER V.

DEMURRER TO ANSWER, REPLICATION.

Sec. 92. The demurrer to answer.
Sec. 93. Causes of demurrer.
Sec. 94. Replication.

Demurrer to answer

SEC. 92. The plaintiff may, within the same length of time after service of the answer as the defendant is allowed to answer after service of summons, demur to the answer of the defendant, or to one or more of the several defenses or counter claims set up in the answer.

Grounds of demurrer.

SEC. 93. The demurrer may be taken upon one or more of the following grounds:

First. That several causes of counter claim have been improperly joined.

Second. That the answer does not state facts sufficient to constitute a defense or counter claim.

Third. That the answer is ambiguous, unintelligible, or uncertain.

Reply.

SEC. 94. When the answer contains new matter the plaintiff may, within ten days from the date of filing such answer, reply thereto, and upon the overruling of a demurrer to an answer, the court may allow the plaintiff to file a reply upon payment of costs caused by such demurrer.

CHAPTER VI.

VERIFICATION, ETC., OF PLEADINGS.

Sec. 95. Pleadings subscribed.
Sec. 96. Verification of pleadings.
Sec. 97. Genuineness and due execution of a written instrument admitted unless answer is verified.

Sec. 98. *When genuineness and due execution, of a written instrument in the answer admitted.*

Sec. 99. *When not deemed admitted.*

Pleadings must be subscribed.

SEC. 95. Every pleading must be subscribed by the party or his attorney.

Verification of pleadings.

SEC. 96. All complaints, answers, and replications shall be verified as provided in this section, except that when an admission of the truth of the allegation might subject the party to a prosecution for felony or misdemeanor, or when the action is by the district attorney, in behalf of the territory or county, the verification may be omitted. The affidavit of verification shall state that the facts stated in the pleading are true to the knowledge of the person making it, except as to those matters which are therein stated on his information and belief, and as to those matters, that he believes it to be true. Such verification shall be made by the party, or if there are several parties united in interest or pleading, by one at least of such parties acquainted with the facts, if such party is in the county and capable of making the affidavit. The verification may also be made by the agent or attorney of the party, if the party is absent from the county where the attorney resides, or is from any other cause unable to verify the pleading, and in such case the verification shall state that the affiant is the agent or attorney of the party, and the reason why such verification is made by such agent or attorney, and that the facts stated in the pleading are true to the best knowledge, information and belief of such agent or attorney.

When a corporation is a party, the verification may be made by any officer thereof, and shall state what officer he is, and that the facts stated in the pleading are true to the best knowledge, information, and belief of such officer.

Copy of instrument attached to complaint.

SEC. 97. When an action is brought upon a written instrument, and the complaint contains a copy of such instrument, or a copy is annexed thereto, the genuineness and due execution of such instrument shall be deemed admitted, unless the answer denying the same shall be verified.

Copy of instrument attached to answer.

SEC. 98. When the defense to an action is founded on a written instrument, and a copy thereof is contained in the answer, or is annexed thereto, the genuineness and due execution of such instrument are deemed admitted, unless the plaintiff file with the clerk, within ten days after the filing of the answer, an affidavit denying the same, and serve a copy thereof on the defendant.

Inspection of original instrument.

SEC. 99. But the execution of the instrument mentioned in the two preceding sections is not deemed admitted by a failure to deny the same under oath, if the party desiring to controvert the same is, upon demand, refused an inspection of the original.

CHAPTER VII.

CONSTRUCTION OF PLEADINGS, ETC.

Sec. 100. Allegations in pleadings liberally construed.
Sec. 101. Sham, irrelevant and redundant matter: items of account.
Sec. 102. Description of real property in complaint.
Sec. 103. Judgments, how pleaded.
Sec. 104. Conditions precedent, how pleaded.
Sec. 105. Statute of limitations, how pleaded and how controverted.
Sec. 106. Private statute, how pleaded.
Sec. 107. Libel and slander, what stated in the complaint.
Sec. 108. Answer in libel and slander.
Sec. 109. Allegations in pleadings not controverted deemed true, etc.
Sec. 110. Material allegations defined.
Sec. 111. Supplemental pleadings.

Construction of pleadings.

SEC. 100. In the construction of a pleading for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties.

Sham and irrelevant matter stricken out.

SEC. 101. Sham and irrelevant answers, and irrelevant and redundant matter, inserted in a pleading may be stricken out upon such terms as the court may in its discretion impose.

Items of account

It shall not be necessary for a party to set forth in a pleading the items of an account therein alleged; but he shall deliver to the adverse party, within five days after a demand therefor in writing, a copy of the account, or be precluded from giving evidence thereof. The court, or judge thereof, or probate judge, may order a further account when the one delivered is too general, or is defective in any particular.

Description of real property.

SEC. 102. In action for the recovery of real property, it must be described in the complaint with such certainty as to enable an officer upon execution to identify it.

Pleading judgment.

SEC. 103. In pleading a judgment or other determination of a court, or officer of especial jurisdiction, it shall not be necessary to state the facts conferring jurisdiction but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish, on the trial, the facts conferring jurisdiction.

Pleading performance of conditions precedent

SEC. 104. In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance, but it may be stated generally that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading shall establish, on the trial, the facts showing such performance.

Pleading limitation.

SEC. 105. In pleading the statute of limitations, it is not necessary to state the facts showing the defense. but it may be stated generally that the cause of action is barred by the provisions of sections ——— (giving the number of the section, and the sub-division thereof, if it is so divided, relied upon) of the code of civil procedure; and if such allegation be controverted, the party pleading must establish on the trial, the facts showing that the cause of action is so barred.

Pleading private statute.

SEC. 106. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

Complaint for libel or slander.

SEC. 107. In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff shall establish, on the trial, that it was so published or spoken.

Answer in actions for libel or slander.

SEC. 108. In the actions mentioned in the last section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory and any mitigating circumstances, to reduce the amount of damages; and whether he prove the justification or not, he may give in evidence the mitigating circumstances.

Allegations admitted.

SEC. 109. Every material allegation of the complaint or answer not controverted by the answer, or replication thereto, shall, for the purposes of the action, be taken as true. The statement in the replication of matter in avoidance shall, on the trial, be deemed controverted by the adverse party.

Material allegation

SEC. 110. A material allegation in a pleading is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient.

Supplemental pleading

SEC. 111. The plaintiff and defendant respectively may be allowed, on motion, to make a supplemental complaint or answer, alleging facts material to the case, occuring after the former complaint or answer.

CHAPTER VIII.

VARIANCE, ERRORS, AMENDMENTS.

Sec 112. Variance between pleadings and proof.
Sec. 113. Variance not material, power of court.
Sec. 114. What variance deemed failure of proof.
Sec. 115. Pleadings amended once without cost.
Sec. 116. Amendments on terms, judgment by mistake, &c.
Sec. 117. In actions for recovery of personal property, when error in stating value disregarded.
Sec. 118 When defendant may be sued by fictitious name.
Sec. 119. Court may disregard errors not affecting substantial rights.

Variance.

SEC. 112. No variance between the allegation in a pleading and the proofs is to be deemed material, unless it has actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Where it appears that a party has been so misled, the court may order the pleading to be amended, upon such terms as may be just.

Amendment.

SEC. 113. Where the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, or may order an immediate amendment, without costs.

Failure of proof

SEC. 114. Where, however, the allegation of the claim, or defense to which the proof is directed, is unproved, not in some particular or particulars only, but in its general scope and meaning, it is not to be deemed a case of variance within the last two sections, but a failure of proofs.

Amendment of course.

SEC. 115. Any pleading may be amended once by the party of course, and without cost, at any time before answer or demurrer filed, and after the demurrer and before the trial of the issue of law thereon, by filing the same as amended, and serving a copy on the adverse party, who may have ten days thereafter in which to answer or demur to the amended pleading.

Amendment of pleadings.

Relief in case of mistake, neglect, etc.

Answer after judgment.

SEC. 116. The court may in furtherance of justice, and on such terms as may be proper, amend any pleading or proceeding, by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for an answer, replication or demurrer, or demurrer to an answer filed. The court may likewise, upon affidavit showing good cause therefor, after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading or proceeding in any other particulars; and may, upon like terms, allow an answer to be made after the time limited by this act; and may, upon such terms as may be just, and upon payment of costs, relieve a party or his legal representatives from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect; and when, for any cause satisfactory to the court, or the judge at chambers, the party aggrieved has been unable to apply for the relief sought, during the term at which such judgment, order, or proceeding complained of was taken, the court, or judge at chambers, in vacation, may grant the relief, upon application made within a reasonable time, not exceeding five months after the adjournment of the term. When, from any cause, the summons and copy of the complaint in an action have not been personally served on the defendant, the court may allow, on such terms as may be just, such defendant or his legal representatives, at any time within six months after the rendition of any judgment in such action, to answer to the merits of the original action.

Value of property in replevin.

SEC. 117. When in an action to recover the possession of personal property, the person making any affidavit did not truly state the value of the property, and the officer taking the property, or the sureties on any bond, is sued for taking the same, the officer or sureties may, in their answer, set up the true value of the property, and that the person in whose behalf said affidavit was made was entitled to the possession of the same when said affidavit was made; or that the value in the affidavit stated was inserted by mistake; and the court shall disregard the value, as stated in the affidavit, and give judgment according to the right of possession of said property at the time the affidavit was made.

14th ses. p 55

Names of parties.

SEC. 118. When the plaintiff is ignorant of the name of the defendant, such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleadings or proceedings may be amended accordingly. It shall be sufficient in all actions, papers, pleadings, or proceedings, to designate any party or person by the initial letter or letters, or some contraction of the christian or first name or names, instead of stating the christian or first name in full.

NOTE.—Sec. 118 is from act of March 12, 1885.

Error or defect disregarded.

SEC. 119. The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings, which shall not effect the substantial rights of the parties; and no judgment shall be reversed or effected by reason of such error or defect.

TITLE VII.

OF THE PROVISIONAL REMEDIES IN CIVIL ACTIONS.

CHAPTER I.

ARREST AND BAIL.

Sec. 120. No person to be arrested in civil action except.
Sec. 121. When defendant may be arrested in a civil action.
Sec. 122. Order of arrest.
Sec. 123. When order made, undertaking therefor.
Sec. 124. Justification of sureties.
Sec. 125. When order made and what to require.
Sec. 126. How order to be served on defendant.
Sec. 127. How order executed, expense of keeping defendant.
Sec. 128. Defendant discharged upon giving bail.
Sec. 129. Bail, form of undertaking.
Sec. 130. Bail may surrender defendant.
Sec. 131. When and how defendant may be surrendered.
Sec. 132. Action against bail.
Sec. 133. Bail exonerated, how.
Sec. 134. Return of undertaking, exception to bail.

Sec. 135. Notice of justification of bail, new undertaking.
Sec. 136. Qualification of bail.
Sec. 137. Justification of bail.
Sec. 138. Bail found sufficient, to be allowed and sheriff exonerated.
Sec. 139. Deposit of money instead of bail.
Sec. 140. May deposit with sheriff, clerk to give two certificates.
Sec. 141. Bail given, deposit refunded.
Sec. 142. Money deposited, how disposed of.
Sec. 143. Sheriff liable for escape.
Sec. 144. Sheriff's official bond liable.
Sec. 145. Proceedings to vacate order or reduce bail.
Sec. 146. Where order vacated or bail reduced.
Sec. 147. Discharge of persons in jail.
Sec. 148. Defendant to give notice of application.
Sec. 149. How notice served.
Sec. 150. Examination of defendant.
Sec. 151. Discharge and oath of prisoner.
Sec. 152. Order of discharge.
Sec. 153. Prisoner may apply every ten days.
Sec. 154. Effect of discharge.
Sec. 155. Plaintiff may discharge prisoner.

Arrest.

SEC. 120. No person shall be arrested in a civil action, except as prescribed in this act.

SEC. 121. The defendant may be arrested, as hereinafter prescribed, in the following cases arising after the passage of this act:

Cases in which arrest may be made in civil actions.

First. In an action for the recovery of money or damages, on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the territory, with intent to defraud his creditors; or when the action is for wilful injury to person, to character, or to property, knowing the property to belong to another.

Second. In an action for a fine or penalty; or for money or property embezzled, or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity; or for misconduct or neglect in office, or in a professional employment; or for a wilful violation of duty.

Third. In an action to recover possession of personal property unjustly obtained, when the property, or any part thereof, has been concealed, removed, or disposed of, so that it cannot be found, or taken by the sheriff.

Fourth. When the defendant has been guilty of fraud in contracting the debt, incurring the obligation for which the action is brought; or in concealing or disposing of the property, or for the taking, detention, or conversion of which the action is brought.

Fifth. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

Order for arrest.

SEC. 122. An order for the arrest of the defendant shall be obtained from the judge of the court in which the action is brought, or from a probate judge.

Affidavit and undertaking.

SEC. 123. The order shall be made whenever it shall appear to the judge, by the affidavit of the plaintiff, or some other person, that a sufficient cause of action exists, and that the case is one of those mentioned in section one hundred and twenty-one. Before making the order the judge shall require a written undertaking on the part of the plaintiff, with at least two sufficient sureties, to the effect that, if the defendant recover judgment, or if the court shall finally decide that the plaintiff was not entitled to an order of arrest, the plaintiff will pay all costs and charges that may be awarded to the defendant, and all damages which he may sustain by reason of the wrongful suing out of the order of arrest, not exceeding the sum specified in the undertaking, which shall be at least five hundred dollars.

Sureties

SEC. 124. Each of the sureties shall annex to the undertaking an affidavit that he is a resident and householder, or freeholder, within the territory, and worth double the sum specified in the undertaking, over and above all his debts and liabilities, exclusive of property exempt from execution. The undertaking shall be filed with the clerk of the court.

Order of arrest

SEC. 125. The order may be made to accompany the summons, or at any time afterwards, before judgment. It shall require the sheriff of the county where the defendant may be found, forthwith to arrest him, and hold him to bail in a specified sum, and to return the order at a time therein mentioned to the the clerk of the court in which the action is pending.

Order to be delivered to sheriff

SEC. 126. The order of arrest, with a copy of the affidavit upon which it is made, shall be delivered to the sheriff, who, upon arresting the defendant, shall deliver to him a copy of the affidavit, and also, if de-desired, a copy of the order of arrest.

Execution of order

SEC. 127. The sheriff shall execute the order by arresting the defendant, and keeping him in custody until discharged by law: *Provided*, That the sheriff shall not be bound to keep such person under arrest more than twenty-four hours, unless the plaintiff advance each day the expense of keeping such person; which expense shall be taxed as costs in the action, and in no case shall be a charge against the county.

Discharge of defendant.

SEC. 128. The defendant, at any time before execution, shall be discharged from the arrest, either upon giving bail or upon depositing the amount mentioned in the order of arrest as provided in this chapter.

Bail.

SEC. 129. The defendant may give bail by causing a written undertaking to be executed by two or more sufficient sureties, stating their places of residence and occupations, to the effect that they are bound in the amount mentioned in the order of arrest, that the defendant shall at all times render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment therein; or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

Surrender of defendant.

SEC. 130. At any time before judgment, or within ten days thereafter, the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested.

Exoneration of bail

SEC. 131. For the purpose of surrendering the defendant the bail, at any time or place before they are finally charged, may themselves arrest him, or, by a written authority endorsed on a certified copy of the undertaking, may empower the sheriff to do so. Upon the arrest of the defendant by the sheriff, or upon his delivery to the sheriff by the bail, or upon his own surrender, the bail shall be exonerated: *Provided*, Such arrest, delivery, or surrender take place before the expiration of ten days after judgment; but if such arrest, delivery or surrender be not made within ten days after judgment, the bail shall be finally charged on their undertaking, and be bound to pay the amount of the judgment within ten days thereafter.

Action against bail.

SEC. 132. If the bail neglect or refuse to pay the judgment within ten days after they are finally charged, an action may be commenced against such bail for the amount of such original judgment.

SEC. 133. The bail shall also be exonerated by the death of the defendant, or his imprisonment in a territorial prison; or by his legal discharge from the obligation to render himself amenable to the process.

Exoneration of bail

SEC. 134. Within the time limited for that purpose, the sheriff shall file the order of arrest in the office of the clerk of the court in which the action is pending, with his return endorsed thereon, together with a copy of the undertaking of the bail. The original undertaking he shall retain in his possession, until filed as herein provided. The plaintiff, within ten days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he shall be deemed to have accepted them, and the sheriff shall be exonerated from liability. If no notice be served within ten days, the original undertaking shall be filed with the clerk of the court.

Acceptance of bail

SEC. 135. Within five days after receipt of notice, the sheriff or defendant may give to the plaintiff, or his attorney, notice of the justification of the same, or other bail (specifying the place of residence and occupation of the latter), before a judge of the court, or clerk thereof, or probate judge, at a specified time and place; the time to be not less than five nor more than ten days thereafter, except by consent of parties. In case other bail be given, there shall be a new undertaking.

Justification of bail

SEC. 136. The qualifications of bail shall be as follows:

Qualifications of bail.

First. Each of them shall be a resident and householder, or freeholder, within the county.

Second. Each shall be worth the amount specified in the order of arrest, or the amount to which the order is reduced, as provided in this chapter, over and above all his debts and liabilities, exclusive of property exempt from execution; but the judge or clerk, on justification, may allow more than two sureties to justify severally, in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

SEC. 137. For the purpose of justification, each of the bail shall attend before the judge or clerk, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency in such manner as the judge or clerk, in his discretion, may think proper. The examination shall be reduced to writing, and subscribed by the bail if required by the plaintiff.

Examination of bail.

Bail sufficient, sheriff exonerated

SEC. 138. If the judge or clerk shall find the bail sufficient, he shall annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed, and the sheriff shall thereupon be exonerated from liability.

Deposit in lieu of bail.

SEC. 139. The defendant may, at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. In case the amount of bail be reduced, as provided in this chapter, the defendant may deposit such amount instead of giving bail. In either case, the sheriff shall give the defendant a certificate of the deposit made, and the defendant shall be discharged out of custody.

Deposit in in court.

SEC. 140. The sheriff shall, immediately after the deposit, pay the same into court, and take from the clerk receiving the same, two certificates of such payment, the one of which he shall deliver or transmit to the plaintiff or his attorney, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the sheriff to collect the sum deposited as in other cases of delinquency.

Bail given, deposit refunded.

SEC. 141. If money be deposited as provided in the last two sections, bail may be given and may justify upon notice, at any time before judgment; and on the filing of the undertaking and justification with the clerk, the money deposited shall be refunded by such clerk to the defendant.

Deposition of deposit.

SEC. 142. Where money shall have been deposited if it remain on deposit at the time of recovery of a judgment in favor of the plaintiff, the clerk shall, under the direction of the court, apply the same in satisfaction thereof; and after satisfying the judgment, shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall, under the direction of the court, refund him the whole sum deposited and remaining unapplied.

Escape or rescue of defendant.

SEC. 143. If, after being arrested, the defendant escape or be rescued, the sheriff shall himself be liable as bail, but he may discharge himself from such liability by the giving and justification of bail at any time before judgment.

Judgment against sheriff.

SEC. 144. If a judgment be recovered against the sheriff upon his liability as bail, and an execution thereon be returned unsatisfied in whole or in part, the same proceeding may be had on his official bond, for the recovery of the whole or any deficiency, as in other cases of delinquency.

SEC. 145. A defendant arrested may, at any time before justification of bail, apply to the judge who made the order, or the court in which the action is pending, upon reasonable notice to the plaintiff, to vacate the order of arrest or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits, or other proofs in addition to those on which the order of arrest was made.

Application to vacate order or reduce bail.

SEC. 146. If, upon such application, it shall satisfactorily appear that there was not sufficient cause for the arrest, the order shall be vacated: or if it satisfactorily appear that the bail was fixed too high, the amount shall be reduced.

Order vacacated or bail reduced

SEC. 147. Every person confined in jail on an execution issued on a judgment rendered in a civil action, shall be discharged therefrom upon the conditions hereinafter specified.

Discharge of defendant

SEC. 148. Such person shall cause notice in writing to be given to the plaintiff, his agent or attorney, that at a certain time and place he will apply to the district or probate judge of the county in which such person may be confined, for the purpose of obtaining a discharge from his imprisonment.

Notice of application

SEC. 149. Such notice shall be served upon the plaintiff, his agent or attorney, one day at least before the hearing of the application. If the plaintiff be not a resident of the county, and have no agent or attorney in the county, no such notice need be served.

Service of notice.

SEC. 150. At the time and place specified in the notice, such person shall be taken before such judge, who shall examine him under oath, concerning his estate and property and effects, and the disposal thereof, and his ability to pay the judgment for which he is committed; and such judge shall also hear any other legal and pertinent evidence that may be produced by the debtor or creditor.

Hearing.

SEC. 151. If, upon examination, the judge be satisfied that the prisoner is entitled to his discharge, such judge shall administer to him the following oath: "I, ——— ———, do solemnly swear (or affirm) that I have not any estate, real or personal, to the amount of fifty dollars, except such as is by law exempted from being taken in execution; and that I have not any other estate, now conveyed or concealed, or in any way disposed of, with design to secure the same to my use, or to defraud my creditors."

Oath.

Order of discharge

SEC. 152. After administering the oath, the judge shall issue an order that the prisoner be discharged from custody, if he be imprisoned for no other cause: and the officer upon receiving service of such order, shall discharge the prisoner forthwith, if he be imprisoned for no other cause.

New application

SEC. 153. If such judge should not discharge the prisoner, he may apply for his discharge at the end of every succeeding ten days, in the same manner as above provided, and the same proceedings shall thereupon be had.

Exempt from second arrest, property liable.

SEC. 154. The prisoner, after being so discharged. shall be forever exempt from arrest and imprisonment for the same debt, but the judgment against him shall remain in full force against any estate, present or future, of the prisoner, not exempt from execution.

Discharge on order of plaintiff.

SEC. 155. The plaintiff in the action may, at any time, order the prisoner to be discharged, and he shall not thereafter be liable to imprisonment for the same cause of action.

CHAPTER II.

CLAIM AND DELIVERY OF PERSONAL PROPERTY.

Sec. 156. Plaintiff may claim delivery of certain property.
Sec. 157. Affidavit, what to show.
Sec. 158. Endorsement requiring sheriff to take the property.
Sec. 159. Affidavit and notice. Undertaking to be executed, and how served, what to contain. Sheriff to take property.
Sec. 160. Exceptions to sufficiency of sureties: proceedings thereon, or on failure to accept.
Sec. 161. Upon judgment in what condition property to be returned.
Sec. 162. When property injured while retained action may be had.
Sec. 163. When property to be sold by sheriff and applied on judgment.
Sec. 164. Sureties not released by proceeding under preceding section.
Sec. 165. Defendant by filing undertaking may require property returned.
Sec. 166. Defendant's sureties to justify. Sheriff responsible and may retain property.
Sec. 167. Qualification and justification of sureties.

Sec. 168. Duty of sheriff if property concealed.
Sec. 169. Sheriff to keep and deliver property.
Sec. 170. Claim of property by third person.
Sec. 171. Notice, undertaking and affidavit to be filed.

SEC. 156. The plaintiff, in an action to recover possession of personal property, may, at the time of issuing summons, or at any time before answer, claim the delivery of such property to him as provided in this chapter. Plaintiff may claim delivery.

SEC. 157. When a delivery is claimed, an affidavit shall be made by the plaintiff, or some one in his behalf, stating: 14th ses. p 103

First. That the plaintiff is the owner of the property claimed, particularly describing it, or is lawfully entitled to the possession thereof. Affidavit

Second. That the property is wrongfully detained by the defendant.

Third. That the same has not been taken for a tax, assessment, or fine, pursuant to statute, or seized under an execution or an attachment against the property of the plaintiff, or if so seized, that it is by statute exempt from seizure, and

Fourth. The actual value of the property.

NOTE —Section 157 from act of March 5th, 1885.

SEC. 158. The plaintiff or his attorney may thereupon, by an endorsement in writing upon the affidavit, require the sheriff of the county where the property claimed may be to take the same from the defendant. Endorsement on affidavit

SEC. 159. Upon receipt of the affidavit and notice, with a written undertaking, executed by two or more sufficient sureties, approved by the sheriff, to the effect that they are bound to the defendant in double the value of the property, as stated in the affidavit for the prosecution of the action, without delay and with effect and for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may from any cause be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. Duty of sheriff.

He shall also, without delay, serve on the defendant a copy of the affidavit, notice, and undertaking, by delivering the same to him personally, if he can be found, or to his agent, from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion; or, if neither have any known place of abode, by putting them in the nearest postoffice, directed to the defendant.

Exception to sureties.

SEC. 160. The defendant may, within two days after the service of a copy of the affidavit and undertaking, give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fails to do so, he shall be deemed to have waived all objections to them. When the defendant excepts, the sureties shall jusitfy on notice, in like manner as upon bail on arrest; and the sheriff shall be responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next section.

Judgment.

SEC. 161. In all cases when a judgment shall be rendered in an action to recover the possession of personal property for the return thereof, or its value in case a return cannot be had, it shall be the duty of the party against whom such judgment shall be rendered to return the same in as good condition as the same was when possession thereof was taken by him.

Action for value if property injured

SEC. 162. In case such property shall, while in the possession of the party against whom such judgment shall be rendered, or while the same shall be unlawfully detained from the party entitled to the possession thereof, be materially injured or lessened in value by use or otherwise, then a return or offer to return the same shall not be deemed a compliance with the undertaking given for its return, but an action may be maintained for the value thereof as assessed by the jury or court, and damages for its detention.

Duty of officer upon return of injured property.

SEC. 163. In case such action to recover possession of personal property shall be brought against any sheriff or other officer who may have levied upon and seized the same under authority of any attachment or other process, and judgment shall be rendered in favor of such officer for the return of the property, the party against whom such judgment shall be rendered may nevertheless make return of said property, notwithstanding the same may have been injured or lessened in value, and thereupon it shall be the duty of such officer to immediately advertise the same for sale as in cases of sales of personal property under execution, and apply the proceeds of the sale thereof, after paying the costs, towards the payment and satisfaction of any judgment that may have been rendered.

SEC. 164. Such second taking of such property referred to in the preceding section shall not release or discharge the sureties on any undertaking given for the return of such property, but an action may be maintained on such undertaking and recovery thereon had, unless the property shall have been actually returned in accordance with the judgment rendered.

Sureties not released by second taking.

SEC. 165. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against the defendant. If a return of the property be not so required within five days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section 170.

Defendant may require return of property.

SEC. 166. The defendant's sureties, upon notice to the plaintiff of not less than two nor more than five days, shall justify before a judge or clerk, in the same manner as upon bail on arrest; and upon such justification the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until the justification is completed or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

Justification of defendant's sureties.

SEC. 167. The qualification of sureties and their justification shall be such as are prescribed by this act in respect to bail upon an order of arrest.

Qualification of sureties.

SEC. 168. If the property, or any part thereof, be concealed in a building or inclosure, the sheriff shall publicly demand its delivery; if it be not delivered, he shall cause the building or inclosure to be broken open, and take the property into his possession; and if necessary, he may call to his aid the power of his county.

Proceedings if property is concealed.

SEC, 169. When the sheriff shall have taken property, as in this chapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

Duty of sheriff.

Claim by third party.

SEC. 170. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or right to the possession thereof, stating the grounds of such title or right, and serve the same upon the sheriff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff on demand of him or his agent, indemnify the sheriff against such claim by an undertaking by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and are freeholders or householders in the county; and no claim to such property by any other person than the defendant or his agent shall be valid against the sheriff unless so made.

Papers to be filed.

SEC. 171. The sheriff shall file the notice, undertaking, and affidavit, with his proceedings thereon, with the clerk of the court in which the action is pending, within twenty days after taking the property mentioned therein.

CHAPTER III.

INJUNCTION.

Sec. 172. Injunction defined.
Sec. 173. In what cases injunction granted.
Sec. 174. When granted, complaint verified, and copies served.
Sec. 175. When allowed after answer filed.
Sec. 176. Court granting must require an undertaking, form of; proceedings when sureties excepted to.
Sec. 177. Defendant may be heard before granting injunction.
Sec. 178. Injunction to suspend business of corporation
Sec. 179. Application to vacate or modify injunction, how made and opposed.
Sec. 180. When it shall be vacated or modified.

Injunction: by whom granted.

SEC. 172. An injunction is a writ or order requiring a person to refrain from a particular act. The order or writ may be granted by the court in which the action is brought, or by a judge thereof, and when made by a judge may be enforced as the order of the court.

Injunction: in what cases granted.

SEC. 173. An injunction may be granted in the following cases:

First. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.

Second. When it shall appear by the complaint or affidavit that the commission or continuance of some act during the litigation would produce great or irreparable injury to the plaintiff.

Third. When it shall appear during the litigation that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

Injunction: when granted.

SEC. 174. The injunction may be granted at the time of issuing the summons upon the complaint, and at any time afterwards, before judgment, upon affidavits. The complaint in the one case, and the affidavits in the other, shall show satisfactorily that sufficient grounds exist therefor. No injunction shall be granted on the complaint unless it be verified by the oath of the plaintiff, or some one in his behalf, that he, the person making the oath, has read the complaint, or heard the complaint read, and knows the contents thereof, and the same is true of his own knowledge, except the matters therein stated on information and belief, and that as to those matters he believes it to be true. When granted on the complaint, a copy of the complaint and verification attached shall be served with the injunction; when granted upon affidavit, a copy of the affidavit shall be served with the injunction.

Injunction after answer.

SEC. 175. An injunction shall not be allowed after the defendant has answered, unless upon notice, or upon an order to show cause; but in such case the defendant may be restrained until the decision of the court or judge, granting or refusing the injunction.

Undertaking.

SEC. 176. On granting an injunction, the court or judge must require, except the people of the territory are a party plaintiff, a written undertaking on the part of the plaintiff, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the court finally decide that the plaintiff was not entitled thereto.

Within five days after the filing of the undertaking required, the defendant may except to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them.

When excepted to the plaintiff's sureties, upon notice to the defendant of not less than two nor more than five days, must justify before a judge or county clerk, in the same manner as upon bail on arrest, and upon failure to justify, or if others in their place fail to justify at the time and place appointed, the order granting an injunction shall be dissolved.

Order to show cause

SEC. 177. If the court or judge deem it proper that the defendant, or any of several defendants, should be heard before granting the injunction, an order may be made requiring cause to be shown at a specified time and place, why the injunction should not be granted, and the defendant may in the meantime be restrained.

Injunction against corporation.

SEC. 178. An injunction to suspend the general and ordinary business of a corporation shall not be granted except by the court or a judge thereof; nor shall it be granted without due notice of the application therefor to the proper officers or managing agent of the corporation, except when the people of this territory are a party to the proceedings.

Application to dissolve.

SEC. 179. If an injunction be granted without notice, the defendant, at any time before the trial, may apply upon reasonable notice, to the judge who granted the injunction, or to the court in which the action is brought, to dissolve or modify the same. The application may be made upon the complaint and the affidavit on which the injunction was granted, or upon affidavit on part of defendant, with or without the answer. If the application be made upon affidavits on part of defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the injunction was granted.

Dissolution or modification of injunction

SEC. 180. If, upon such application, it satisfactorily appear that there is not sufficient ground for the injunction, it shall be dissolved; or, if it satisfactorily appear that the extent of the injunction is too great, it shall be modified.

CHAPTER IV.

ATTACHMENTS.

Sec. 181. Attachment when issued and affidavit for.
Sec. 182. Undertaking, sureties thereon and amount.
Sec. 183. Attachment, when debt not due, in what cases.
Sec. 184. Writ, how directed, and what to contain.
Sec. 185. Property liable to attachment.
Sec. 186. In what manner writ executed.
Sec. 187. County recorder to file copy of writ, fees therefor.
Sec. 188. Garnishment.
Sec. 189. Liability of garnishee.
Sec. 190. Garnishee and defendant may be examined.
Sec. 191. Inventory and return of sheriff, and memorandum of garnishee.
Sec. 192. Perishable property, proceeds of other property and debts and credits.
Sec. 193. Property attached claimed by third parties.
Sec. 194. Satisfaction of judgment out of attached property.
Sec. 195. Sheriff shall collect balance of judgment, as upon an execution.
Sec. 196. Plaintiff may prosecute the undertaking.
Sec. 197. If defendant recover judgment property to be returned and attachment discharged.
Sec. 198. Defendant may obtain release of property attached.
Sec. 199. Undertaking for release of property attached.
Sec. 200. Application to discharge attachment improperly issued.
Sec. 201. Motion on affidavits may be opposed by affidavits.
Sec. 202. If improperly issued, discharged.
Sec. 203. Return of writ.
Sec. 204. When lien accrues, first writ levied first lien.
Sec. 205. Attachment book to be kept by recorder, his fees.

SEC. 181. The plaintiff at the time of issuing the summons, or at any time afterwards, may have the

Attachment: affidavit.

property of the defendant not exempt from execution attached as security for the satisfaction of any judgment that may be recovered in said action, unless the defendant give good and sufficient security to secure the payment of said judgment: *Provided*, That no writ of attachment shall be issued until the plaintiff, his agent or attorney, shall file with the clerk an affidavit showing that the defendant is indebted to the plaintiff upon a contract, expressed or implied, for the payment of money, gold dust, or other property then due, which is not secured by a mortgage lien, or pledge upon real or personal property, or is so secured that the security has become insufficient by the act of the defendant, or by any means has become nugatory.

12th ses. p 9.

Undertaking.

SEC. 182. Before issuing the writ the clerk shall require a written undertaking on the part of the plaintiff, with two or more sufficient sureties to be approved by the clerk, in a sum not less than double the amount claimed by the plaintiff, if such amount be one thousand dollars or under, or in case the amount so claimed by plaintiff shall exceed one thousand dollars, then in a sum equal to such amount, but in no case shall an undertaking be required exceeding in amount the sum of ten thousand dollars. The condition of such undertaking shall be to the effect that if the defendant recover judgment, or if the court shall finally decide that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages he may sustain by reason of the issuing out of the attachment, not exceeding the sum specified in the undertaking. Within five days after service of the summons in the action, the defendant may except to the sufficiency of the sureties. If he fail to do so, he is deemed to have waived all objection to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two days nor more than five days, must justify before a judge of the district or probate court, or before a county clerk, and upon failure to justify, or if others in their place fail to justify, at the time and place appointed, the clerk or judge shall issue an order vacating the writ of attachment.

NOTE —Section 182 from Act of February 23, 1881.

Attachment prior to maturity of debt.

SEC. 183. Actions may be commenced, and writs of attachment issued, upon any debt for the payment of money or specific property, before the same shall have become due, when it shall appear by the affidavit, in addition to what is required in section 181 of this chapter; first, that the defendant is leaving, or is about to leave this territory, taking with him or her property, moneys, or other effects, which might be subjected to the payment of the debt, for the purpose of defrauding his creditors; or, second, that the defendant is disposing of his property or is about to dispose of his property, subject to execution, for the purpose of defrauding his creditors: *Provided*, That any judgment obtained under the provisions of this section shall be with a rebatement of the interest from the time said judgment is rendered until the time at which said debt would have become due: *And provided also*, That the defendant may by a plea, put in issue the matter alleged in the affidavit herein required, and if the plaintiff fail to substantiate some one of the causes required to be alleged in said affidavit, the suit for debt or debts not due shall abate.

The writ: undertaking by defendant.

SEC. 184. The writ shall be directed to the sheriff of any county in which property of such defendant may be, and require him to attach and safely keep all the property of such defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, unless the defendant deposit the amount or give him security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached, in which case to take such undertaking. Several writs may be issued at the same time to the sheriffs of different counties.

What property may be attached.

SEC. 185. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits thereon, and all debts due such defendant, and all other property in this territory of such defendant not exempt from execution, may be attached, and, if judgment be recovered, be sold to satisfy the judgment and execution.

Execution of writ.

SEC. 186. The sheriff to whom the writ is directed and delivered shall execute the same without delay, and if the undertaking mentioned in section 184 be not given, as follows:

First, Real property shall be attached by filing with the recorder of the county a copy of the writ, together with a description of the property attached, and a notice that it is attached.

Second. Real property, or any interest therein, belonging to the defendant, and standing upon the records of the county in the name of any other person, shall be attached by filing with the recorder of the county a copy of the writ, together with a description of the property, and a notice that such real property and any interest of the defendant therein, standing in the name of such other person—naming him—are attached.

NOTE.—First and second subdivisions of section 186 are from Act of February 16, 1885.

Third. Personal property capable of manual delivery shall be attached by taking it into custody.

Fourth. Stock or shares, or any interest in stock or shares, of any corporation or company, shall be attached by leaving with the president, or other head of the same, or the secretary, or cashier of the same, or other managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of defendant is attached in pursuance of such writ.

Fifth. Debts and credits, and other personal property not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession, or under his control, such credits and other personal property, or with his agent, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession, or under his control, belonging to the defendant, are attached in pursuance of such writ.

Duty of recorder

SEC. 187. It shall be the duty of the county recorder to file and safely keep such copy of the writ and description of the property, subject to the inspection of all persons; and such recorder shall receive a fee of twenty-five cents for such filing and safe keeping of said list, to be paid by the plaintiff in the action and taxed and allowed to him as other costs and disbursements in the action.

Garnishment.

SEC. 188. Upon receiving information in writing from the plaintiff or his attorney, that any person has in his possession, or under his control, any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the sheriff shall serve upon such person a copy of the writ, and a notice that such credits or other property or debts, as the case may be, are attached in pursuance of such writ.

Liability of garnishee.

SEC. 189. All persons having in their possession, or under their control, any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice as provided in the last section, shall be, unless such property be delivered up or transferred, or such debts be paid to the sheriff, liable to the plaintiff for the amount of such credits, property, or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

Examination of garnishee.

SEC. 190. Any person owing debts to the defendant, or having in his possession, or under his control, any credits or other personal property belonging to the defendant, may be required to attend before the court or judge, or a referee appointed by the court or judge, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The court or judge may, after such examination, order personal property capable of manual delivery to be delivered to the sheriff upon such terms as may be just, having reference to any liens thereon, or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

Inventory.

SEC. 191. The sheriff shall make a full inventory of the property attached, and return the same with the writ. To enable him to make such return as to debts and credits attached, he shall request, at the time of service, the party owing the debt, or having the credit, to give him a memorandum, stating the amount and description of each; and if such memorandum be refused, he shall return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceedings taken for the purpose of obtaining information respecting the amount and description of such debt or credit.

Refusal to give memorandum.

Disposition of property attached.

SEC. 192. If any of the property attached be perishable, the sheriff shall sell the same in the manner in which such property is sold on execution. The proceeds, and other property attached by him, shall be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The sheriff's receipt shall be a sufficient discharge for the amount paid.

Claim of third party.

SEC 193. If any personal property attached be claimed under oath by a third party as his property, the sheriff shall deliver the property to such third party within five (5) days, if the plaintiff resides within the county, otherwise ten days, after notice to plaintiff's attorney, unless that plaintiff give to the sheriff good and sufficient bond to indemnify him against loss or damage, by reason of holding such property.

Proceedings after judgment

SEC. 194. If judgment be recovered by the plaintiff, the sheriff shall satisfy the same out of the property attached by him, which has not been delivered to the defendant, or claimant, as hereinbefore provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose, first, by paying the plaintiff the proceeds of all sales of perishable property sold by him, or any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment; second, if any balance remain due, and an execution shall have been issued on the judgment, he shall sell, under the execution, so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notices of the sales shall be given and the sales conducted as in other cases of sales on execution.

Proceeds of property attached; balance; surplus.

SEC. 195. If, after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment shall have been paid, the sheriff, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

Undertaking may be prosecuted.

SEC. 196. If the execution be returned unsatisfied in whole or in part, the plaintiff may prosecute any undertaking given pursuant to section 197, or he may proceed as in other cases, upon the return of an execution.

If defendant recover judgment attachment is discharged.

SEC. 197. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales and money collected by the sheriff, and all the property attached remaining in the sheriff's hands, shall be delivered to the defendant or his agent; the order of attachment shall be discharged and the property released therefrom.

Release by defendant.

SEC. 198. The defendant may, at any time, release any property in his hands to the sheriff, by virtue of any writ of attachment, by executing an undertaking as provided for in the next section; and all proceeds of sales and money collected by the sheriff, and all the property attached remaining in his hands, shall be released from the attachment and delivered to the defendant, upon the justification of the sureties and the undertaking.

Undertaking upon release.

SEC. 199. Before releasing such attached property, as aforesaid, to the defendant, the sheriff shall require an undertaking executed by the defendant, and at least two sureties, residents and freeholders, or householders in the county, to the effect that in case the plaintiff recover judgment in the action, defendant will, on demand, redeliver such attached property so released to the proper officer, to be applied to the payment of the judgment, and that in default thereof, the defendant and sureties will pay to the plaintiff the full value of the property so released. The sheriff may fix the sum for which the undertaking shall be executed, and if necessary, in fixing such sum, to know the value of the property released, the same may be appraised by three disinterested persons, to be appointed by the sheriff; and if any sheriff shall release any property held by him, under or by virtue of any writ of attachment, without first taking such bond as herein required, or shall take an insufficient bond, he and his sureties shall be liable for the value of such property so released.

Application to discharge attachment.

SEC. 200. The defendant may also, at any time before the time for answering expires, apply, on motion, upon reasonable notice to the plaintiff, to the court in which the action is brought, or the judge thereof, that the attachment be discharged on the ground that the writ was improperly issued.

Affidavits

SEC. 201. If the motion be made upon affidavits on the part of defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the order of attachment was made.

Discharge of attachment

SEC. 202. If, upon such application, it shall satisfactorily appear that the writ of attachment was improperly issued, it shall be discharged.

Sheriff's return.

SEC. 203. The sheriff shall return the writ of attachment with the summons, if issued at the same time, otherwise within twenty days after its receipt, with a certificate of his proceedings endorsed thereon or attached thereto.

Attachment liens.

SEC. 204. All liens by attachment shall accrue at the time the property of the defendant shall be attached by the officer charged with the execution of the writ, in the order in which they are levied; and said liens shall not be affected by any subsequent attachment, or by any judgment obtained subsequent thereto: *Provided*, That if two or more attachments shall be levied upon the same property at the same time, they shall share *pro rata* in the proceeds of said property; but in all cases the first attachment levied shall be first satisfied: *Provided, further*, That the first writ placed in the hands of the officer shall be levied first.

Attachment book.

Sec. 205. There shall be kept in the recorder's office of the county recorder of each county, a book called "Attachment Book," in which shall be entered by such recorder, in alphabetical form, the names of any person or persons against whom any writ or notice of attachment has been filed in his office; there shall also be entered in said book the time such writ was filed. Such entries shall be made under appropriate heads for that purpose. For making such entry the recorder shall receive twenty-five cents, to be paid by the plaintiff in the action, and taxed and allowed to him as other costs and disbursements in the action.

CHAPTER V.

ATTACHMENT OF BOATS.

Sec. 206. For what boats may be attached.
Sec. 207. Claims that are liens upon boats.
Sec. 208. Priority of liens.
Sec. 209. Limitation of actions against boats.
Sec. 210. When lien to attach.
Sec. 211. Liability of rafts; proceedings same as against boats.
Sec. 212. Proceedings, how commenced.
Sec. 213. Description of boat.
Sec. 214. Summons, how served.
Sec. 215. Who may serve summons.
Sec. 216. Who may appear for defendant; no continuance granted plaintiff.
Sec. 217. Boat may be discharged before judgment, by giving bond.
Sec. 218. Execution against boat.
Sec. 219. What officer may sell to satisfy execution.
Sec. 220. Status of purchaser of fractional interest.

Sec. 221. Plaintiff's right to otherwise sue not affected.

Sec. 222. Sufficient allegation that services were rendered boat.

SEC. 206. Any boat found within the waters of this territory is liable:

Liability of boats

First. For all debts contracted by the master, owner, agent, clerk, or consignee thereof, on account of supplies furnished for the use of such boat, or on ~~account of~~ work done or materials furnished in building, repairing, fitting out, furnishing, or equipping such boat.

Second. For all demands or damages accruing from the non-performance or mal-performance of any contract of affreightment, or any contract relative to the transportation of persons or property, entered into by the master, owner, agent, clerk, or consignee thereof.

Third. For all injuries to persons or property by such boat, or by the officers or crew, done in connection with the business of such boat.

Lien upon boat.

SEC. 207. Claims growing out of any of the above causes are liens upon such boat, its apparel, tackling, furniture, and appendages, including barges and lighters, if owned by the owners of such boat, and used therewith, at the time suit is commenced.

Precedence of liens.

SEC. 208. Such liens shall take preference of any claim against the boat itself, or any or all of its owners, growing out of any other causes than those above enumerated, and as between themselves they shall be preferred in the following order:

First. Those resulting from wages for services on board such boat within the year then passed: *Providing*, That suit is brought within twenty days after the cessation of such labor.

Second. Those resulting from contracts made within this territory.

Third. All other causes.

Limitation.

SEC. 209. Actions against boats under the provisions of this chapter shall not be brought after the lapse of one year from the time the cause of action accrued.

When lien attaches.

SEC. 210. The lien shall attach from the commencement of suit, subject only to such other liens as are of a preferred class.

Liens upon rafts.

SEC. 211. Any raft found in any of the waters of this territory shall be liable for all debts contracted by the owner, clerk, pilot, or agent thereof, on account of work done or services rendered for such raft.

Claims growing out of either of the above causes shall be liens upon the raft, its tackling and appendages, for the term of twenty days from the time the right thereof accrued, and the same rules shall govern, and the same process shall be had, that are prescribed for similar liens against boats.

Seizure of boat.

SEC. 212. Any person desiring to take the benefit of this act shall file with any judge or clerk of any court, or justice of the peace, having jurisdiction, a complaint in writing, duly verified by the plaintiff, or his agent or attorney, which complaint shall show that the plaintiff is entitled to the benefit of this act; whereupon such judge, clerk, or justice of the peace, shall issue his warrant to the proper officer, commanding him to seize the boat, its tackling, apparel, furniture, and appendages, and retain the same until released by due course of law.

Complaint.

SEC. 213. The complaint shall describe the boat by name as defendant, but if it have no name, then by such description as will enable the officer attaching to seize the proper property.

Summons.

SEC. 214. The usual summons shall be issued, directed to the boat by name, or to the property to be attached, if no name appear, and be served upon the master, owner, clerk, agent, or consignee thereof, and if none of them can be found, by posting up a copy in some conspicuous part of the boat, or property to be attached.

Warrant.

The warrant shall be served according to the directions it contains.

Service.

SEC. 215. Any sheriff, constable or city marshal, or marshal of the territory, may serve the warrant and summons above mentioned, whether the same issue from the office of the clerk, or from a judge or justice of the peace, and any clerk, judge or justice may in his discretion appoint any suitable person to serve such summons and warrant, who shall have all the power of a sheriff in the premises.

Appearance for boat.

SEC. 216. Any master, agent, clerk, consignee, or other person interested in the boat, may appear by himself, his agent, or attorney, for the defendant, and conduct the defense of the suit, and no continuance shall be granted to the plaintiff while the boat is in custody.

Discharge.

SEC. 217. The boat may be discharged at any time before final judgment, by giving bonds with at least two sureties, to be approved by the officer serving the warrant, or by the clerk, judge, or justice who issued it, in a penalty double the plaintiff's demand and costs, conditioned that the obligors will pay the amount found due to the plaintiff with costs.

Execution.

SEC. 218. If judgment be rendered against the boat before it is discharged, as provided in the last section, execution shall be issued against it, together with its apparel, tackling, furniture, and appendages.

Sale.

SEC. 219. The officer may sell any of the furniture and appendages of the boat, if by doing so he can satisfy the demand; if he sell the boat itself he must sell it to the bidder who will advance the amount necessary to satisfy the execution for the lowest fractional share of the boat, unless the person appearing for the boat require a different and equally convenient mode of sale.

Purchaser's interest.

SEC. 220. If the fractional share of the boat be thus sold, the purchaser shall hold such share or interest jointly with the owners.

Plaintiff's rights.

SEC. 221. Nothing herein contained shall affect the right of a plaintiff to sue in the same manner as though this act had not been enacted.

Sufficient allegation.

SEC. 222. It shall be sufficient for the plaintiff to allege in his complaint or affidavit, that the services were rendered or material was furnished the boat by its name.

CHAPTER VI.

ATTACHMENT OF LIVE STOCK ON RANGES.

Sec. 223. Range stock, how it may be attached.
Sec. 224. Possession under a mortgage, how acquired.
Sec. 225. Time attachment holds good limited.
Sec. 226. Duties of County Recorder to record attachment.
Sec. 227. Penalty for selling stock which has been attached.
Sec. 228. How a subsequent attachment may be made.

14th ses. p 111

SEC. 223. Whenever it is necessary for any officer or person charged with the service of process out of any of the courts of this territory to take custody and possession of any cattle or horses running and roaming at large, and commonly known as range stock, between the first day of November and the next succeeding fifteenth day of May, it shall be a sufficient service of such process for the officer or person charged with

—8

the service of the same to file a copy thereof, with a notice appended thereto, containing the number, as near as may be, and a description of said stock by marks and brands, that such property, or a portion thereof, as the case may be, is attached, taken, levied upon, or seized, in pursuance of such process, with the recorder of the county wherein such property is running at large, within fifteen days after the receipt of such process for service, and shall make due return of his said proceedings upon said process.

Seizure of range stock.

14th ses. p. 111

Possession of range stock.

SEC. 224. In all cases where it is necessary under the laws of this territory for a party to any mortgage, assignment, bill of sale, or other contract, between the first day of November and the next succeeding fifteenth day of May, to take custody and possession of any such cattle or horses in order to preserve his rights under any such mortgage, assignment, bill of sale, or other contract, it shall be sufficient for such party to file a copy of the instrument under which he claims, with a notice of such claim appended thereto, with the recorder of the county wherein such property is running at large, within five days after it becomes necessary for him to so take custody and possession of the same.

14th ses. p 112

Effect of filing process or instrument.

SEC. 225. When the copy of the process or instrument, with the proper notice appended thereto, is filed as hereinbefore provided, it shall have the same effect as if actual custody and possession of said cattle and horses has been taken by the officer or person charged with the execution of such process, or the party required under said instrument to take the same, and shall continue to have such effect until actual custody or possession of such property has been taken or had by the officer, person, or party aforesaid; *Provided*, That such actual custody [or] possession be had or taken prior to the first day of August next succeeding

14th ses. p 112

Duty of recorder.

SEC. 226. It shall be the duty of said county recorder to file all papers deposited with him for that purpose, and required to be filed under this chapter, and preserve the same as other records of his office are preserved, and furnish to persons making inquiry about such files all necessary information concerning the same, for which said services he shall receive from the party filing the process or instrument aforesaid the sum of one dollar for each paper so filed.

14th ses. p 113

SEC. 227. Any person or persons whose property has been taken, attached, levied upon, or seized, by filing the process and notice aforesaid, or whose property has been affected by filing the instrument and notice aforesaid, who shall, with a knowledge of such facts, sell or otherwise dispose of such property, or any part thereof, with intent to defraud any person or persons of their just rights in the premises, shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, be fined in a sum not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months, or by both such fine and imprisonment; but in no case shall such sale or transfer affect the rights of the parties secured by the provisions of this chapter by filing the papers aforesaid.

Punishment in case of sale after filing notice

Sec. 228. When an officer into whose hands a writ of execution has come shall have served the same in accordance with section two hundred and twenty-two of this chapter, and shall have made his return in accordance with the facts, at any time thereafter, within the time limited as hereinbefore provided to hold the property seized, taken or levied upon such writ, another writ of execution may be issued, which shall be supplementary to the first writ, and in pursuance of which the officer or person charged with the service thereof may sell the property held by said first writ, as hereinbefore provided.

14th ses p 113

Second writ.

Note—Chapter VI act of March 12th, 1885

CHAPTER VII.

RECEIVERS.

Sec. 229. In what cases the court may appoint a receiver.
Sec. 230. Upon the dissolution of a corporation the court may appoint a receiver.
Sec. 231. A party or attorney not to be appointed without consent of parties; ex parte application.
Sec. 232. Oath and undertaking of receiver.
Sec. 233. Powers of receiver.
Sec. 234 Funds in receiver's hands may be invested by consent.

Sec. 229. A receiver may be appointed by the court in which an action is pending, or by the judge thereof:

Cases in which receiver may be appointed.

First. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to, or interest in, the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

Second. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt.

Third. After judgment to carry the judgment into effect.

Fourth. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment.

Fifth. In cases when a corporation has been dissolved, or is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights.

Sixth. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

Receiver for corporation.

Sec. 230. Upon the dissolution of any corporation, the district courts of the county in which the corporation carries on its business, or has its principal place of business, on application of any creditor of the corporation, or of any stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding indebtedness thereof, and to divide the moneys and other property that shall remain over, among th stockholders or members.

Interested person may not be receiver; undertaking.

Sec. 231. No party or attorney, or person interested in an action can be appointed receiver therein without the written consent of the parties, filed with the clerk. If a receiver be appointed upon an *ex part* application, the court before making the order, may require from the applicant an undertaking with sufficient sureties, in an amount to be fixed by the court, t the effect that the applicant will pay to the defendan all damages he may sustain by reason of the appointment of such receiver, and the entry by him upon hi duties, in case the applicant shall have procured such appointment wrongfully, maliciously, or without sufficient cause, and the court may in its discretion, at any time after said appointment, require an additional undertaking.

Oath of receiver.

SEC. 232. Before entering upon his duties the receiver must be sworn to perform them faithfully, and with one or more sureties, approved by the court or judge, execute an undertaking to such person, and in such sum as the court or judge may direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein.

Power of receiver.

SEC. 233. The receiver has, under the control of the court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same; to make transfers, and generally to do such acts respecting the property as the court may authorize.

Investment of funds.

SEC. 234. Funds in the hands of a receiver may be invested upon interest by order of the court; but no such order can be made except upon the consent of all the parties to the action.

CHAPTER VIII.

DEPOSIT IN COURT.

Sec. 235. When money deposited in court.
Sec. 236. Disposition of money deposited.
Sec. 237. Power of court when order to deposit money disobeyed.

Deposit in court.

SEC. 235. When it is admitted by the pleading or examination of a party that he has in his possession or under his control any money or other thing capable of delivery, which, being the subject of litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same, upon motion, to be deposited in court or delivered to such party, upon such conditions as may be just, subject to the further direction of the court.

Disposition of deposit

SEC. 236. If the money is deposited in court it must be paid to the clerk, who must deposit it with the county treasurer, by him to be held subject to the order of the court. For the safe keeping of the money deposited with him the treasurer is liable on his official bond.

Power of court in case of disobedience.

Sec. 237. Whenever in the exercise of its authority, a court has ordered a deposit or delivery of money or other thing, and the order is disobeyed, the court, besides punishing the disobedience, may make an order requiring the sheriff to take the money or thing and deposit or deliver it in conformity with the direction of the court.

TITLE VIII.—CHAPTER I.

JUDGMENTS IN GENERAL.

Sec. 238. Judgment defined.
Sec. 239. May be given for or against one or more of either parties.
Sec. 240. Judgment against one or more defendants, and action as to others.
Sec. 241. What relief granted plaintiff.
Sec. 242. Dismissal of action or non-suit entered, when.
Sec. 243. Judgment upon the merits.
Sec. 244. Judgment for costs.

Judgment defined.

Sec. 238. A judgment is the final determination of the rights of the parties in an action or proceeding.

How judgment may be given.

Sec. 239. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants, and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between themselves.

Judgment in action against several defendants.

Sec. 240. In an action against several defendants the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others whenever a several judgment is proper.

Relief.

Sec. 241. The relief granted to the plaintiff, if there be no answer, shall not exceed that which he shall have demanded in his complaint; but in any other case the court may grant him any relief consistent with the case made by the complaint and embraced within the issue.

Dismissal · judgment of non-suit.

Sec. 242. An action may be dismissed or a judgment of a non-suit entered, in the following cases.

First. By the plaintiff himself at any time before the trial, upon the payment of costs, if a counter claim has not been made. If a provisional remedy has been allowed, the undertaking shall thereupon be delivered by the clerk to the defendant, who may have his action thereon.

Second. By either party upon the written consent of the other.

Third. By the court when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal.

Fourth. By the court, when, upon trial, and before the final submission of the case, the plaintiff abandons it.

Fifth. By the court, upon motion of the defendant, when, upon the trial, the plaintiff fails to prove a sufficient case for the jury.

The dismissal mentioned in the first two sub-divisions shall be made by an entry in the clerk's register. Judgment may thereupon be entered accordingly.

Judgment upon merits.

SEC. 243. In every case, other than those mentioned in the last section, the judgments shall be rendered upon the merits.

R S, p 191

Duty of court

SEC. 244. Upon the dismissal or other disposition of an action in which the court has jurisdiction of the subject matter of the action, it shall be the duty of the court to render such judgment for costs as is according to law.

NOTE —Section 244 from act of Feb. 13th, 1874

CHAPTER II.

JUDGMENT UPON FAILURE TO ANSWER.

Sec. 245. When judgment rendered upon defendant failing to answer.

Judgment by default

SEC. 245. Judgment may be had if the defendant fail to answer the complaint, as follows:

First. In an action arising upon a contract for the recovery of money or damages only, if no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted, the clerk, upon the application of the plaintiff, shall enter the default of the defendant, and immediately thereafter enter judgment for the amount specified in the summons, including the costs, against the defendant, or against one or more of several defendants, in the cases provided for in section seventy-seven.

Second. In other actions, if no answer has been filed with the clerk within the time specified in the summons, or such further time as may have been granted, the clerk shall enter the default of the defendant; and thereafter the plaintiff may apply at the first or any subsequent term of the court for the relief demanded in the complaint. If the taking of an account or the proof of any fact be necessary to enable the court to give judgment, or to carry the judgment into effect, the court may take the account or hear the proof; or may, in its discretion, order a reference for that purpose; and where the action is for the recovery of damages in whole or in part, the court may order the damages to be assessed by a jury; or if, to determine the amount of damages the examination of a long account be necessary, by a reference as above provided.

Third. In actions where the service of the summons was by publication, the plaintiff, upon the expiration of the time designated in the order of publication, may, upon proof of the publication, and that no answer has been filed, apply for judgment; and the court shall thereupon require proof to be made of the demand mentioned in the complaint, and if the defendant be not a resident of the territory, shall require the plaintiff or his agent to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use, on account of such demand, and may render judgment for the amount which he is entitled to recover.

CHAPTER III.

ISSUES—THEIR MODE OF TRIAL.

Sec. 246. When issues arise and their kind.
Sec. 247. Issues of law.
Sec. 248. Issues of fact.
Sec. 249. Trial of issue of law.
Sec. 250. What issues tried by the jury, issue of law first disposed of.
Sec. 251. Causes entered upon the calendar.
Sec. 252. Either party may bring issue to trial.
Sec. 253. How trial may be postponed.
Sec. 254. If trial postponed, testimony of witnesses may be taken.

Issues.

SEC. 246. An issue arises when a fact or conclusion of law is maintained by the one party and is controverted by the other. Issues are of two kinds—first, of law; and, second, of fact.

Issue of law.

SEC. 247. An issue of law arises upon a demurrer to the complaint or answer, or replication, or to some part thereof.

Issue of fact.

SEC. 248. An issue of fact arises, first, upon a material allegation in the complaint, controverted by the answer; and, second, upon new matter in the answer controverted by the replication, or upon new matter in the replication, except an issue of law is joined thereon.

Trial of issue of law.

SEC. 249. An issue of law must be tried by the court, unless it is referred upon consent.

Trial of issues of fact.

SEC. 250. In actions for the recovery of specific real property with or without damages, and for an injunction to stay waste, or for money claimed as due upon contract, or as damages for breach of contract, or for injuries, an issue of fact must be tried by a jury, unless a jury trial is waived, or a reference is ordered by consent of the parties. In all cases where there are issues of both law and fact, the issues of law must be first disposed of, and in all cases issues of fact must be tried by a jury (except in actions which involve the settlement of accounts between parties), unless a jury shall be waived by the parties.

Calendar.

SEC. 251. The clerk shall enter causes upon the calendar of the court according to the date of the issue. Causes once placed upon the calendar, for a general or special term, if not tried or heard at such term, shall remain upon the calendar from court to court until finally disposed of.

Trial in absence of adverse party.

SEC. 252. Either party may bring the issue to a trial, or to a hearing, and in the absence of the adverse party, unless the court for good cause otherwise direct, may proceed with his case, and take a dismissal of the action, or verdict, or a judgment, as the case may require.

Continuance.

SEC. 253. A motion to postpone a trial on grounds of the absence of evidence, shall only be made upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it. The court may also require the moving party to state upon affidavit the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed; and upon terms the court may, in its discretion, upon good cause shown, and in furtherance of justice, postpone a trial or proceeding upon other grounds than the absence of evidence.

Testimony of witnesses in case of postponement.

SEC. 254. The party postponing a trial in any court of record, shall also, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, be then taken, before any judge or clerk of the court in which the cause is pending, or before a notary public, or other officer authorized to take depositions, as the court may indicate, which shall accordingly be done. and the testimony so taken may be read on the trial with the same effect, and subject to the same objections, as if the witness was produced.

CHAPTER IV.

FORMATION OF THE JURY.

Sec. 255. Jury, how drawn. Of what number to consist.
Sec. 256. Oath of jurors.
Sec. 257. Challenge of jurors.
Sec. 258. Grounds of challenge for cause.
Sec. 259. Challenge for cause, how tried.
Sec. 260. Order of challenge.
Sec. 261. Vacancy in jury, how filled.

12th ses p. 58

Selection of trial jury.

SEC. 255. At the commencement of any term of the district court, or as soon thereafter as the trial jurors summoned shall be in attendance, the judge shall examine the jurors who appear, and if more than twenty-four trial jurors who are qualified and not subject to any exemption, or any of the disqualifications provided by law, shall appear and remain after all excuses are allowed, the court shall discharge by lot the number in excess of twenty-four. If for any reason the panel of trial jurors shall not be full at the opening of court, or at any time during the term, the clerk shall, under the direction of the court, draw from the box furnished by the county commissioners, as provided by law, so many additional names as the court shall direct to fill such panel, who shall be summoned in the same manner as the others, and, if necessary, jurors may continue to be drawn and summoned, from time to time, until the panel shall be filled. When, by reason of challenge in the selection of a jury for the trial of any cause, or by reason of the sudden sickness or absence of any juror, for any cause, the regular panel shall be exhausted, the court may direct the sheriff to summons from the citizens of the body of the county, and not, from the bystanders, so many qualified persons as may be necessary to complete the jury for the pending trial; but upon objection by either party to the cause to the sheriff summoning a sufficient number of persons to fill the panel, the court shall appoint a special bailiff to summon such persons: *Provided*, The same person shall not be appointed special bailiff more than once at any term of court. When a sufficient number of persons having the qualifications of jurors as provided by law to fill the panel in order that a jury may be drawn therefrom, and when such jury is drawn, the persons selected from the citizens to fill the panel and not chosen on the jury, shall be discharged from the panel, and those chosen to serve on the jury shall also be discharged from the panel at the conclusion of the trial: *Provided*, That persons so selected shall not thereby be disqualified or exempt from service as jurors when regularly drawn by the clerk for that purpose in the manner provided by law. Any person who shall seek the position of juror, or who shall ask any attorney or other officer of the court, or other person, to secure his selection as a juryman, shall be deemed guilty of a contempt of court. Any attorney or party to a suit pending for trial at that term who shall request or solicit the placing of any person upon a jury, shall be deemed guilty of a contempt of court. The jury shall consist of twelve persons, unless the parties consent to a less number. The parties may consent to any number, not less than three; such consent shall be entered by the clerk in the minutes of the trial.

NOTE.—Sec. 255 is from act of Feb. 23d, 1881.

Oath of jurors

SEC. 256. As soon as the jury is completed, an oath or affirmation shall be administered to the jurors, in substance: That they, each of them, will well and truly try the matter at issue between ———, the plaintiff, and ———, the defendant, and a true verdict render according to the evidence.

Challenges.

SEC. 257. Either party may challenge the jurors, but when there are several parties on either side, they shall join in a challenge before it can be made. The challenge shall be to individual jurors, and shall be either peremptory or for cause. Each party shall be entitled to four peremptory challenges. Either party shall have the right to have the whole jury sworn to answer questions as to their competency in the first instance, and may examine them on any of the matters of challenge for cause.

Challenges for cause.

SEC. 258. Challenges for cause may be taken on one or more of the following grounds:

First. A want of any of the qualifications prescribed by statute to render a person competent as a juror.

Second. Consanguinity or affinity within the third degree to either party.

Third. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent, to either party, or being a member of the family of either party, or a partner in business with either party, or being security on any bond or obligation for either party.

Fourth. Having served as a juror or been a witness on a previous trial between the same parties for the same cause of action.

Fifth. Interest on the part of juror in the event of the action, or in the main question involved in the action, except the interest of the juror as a member or citizen of a municipal corporation.

Sixth. Having formed or expressed an unqualified opinion or belief as to the merits of the action.

Seventh. The existence of a state of mind in the juror evincing enmity against, or bias to, either party.

Trial of challenges.

SEC. 259. Challenges for cause shall be tried by the court. The juror challenged, and any other person, may be examined as a witness on the trial of the challenge.

Order of making challenges.

SEC. 260. The plaintiff first, and afterwards the defendant, shall complete his challenges for cause; they may then alternately, in the same order, have the right to challenge peremptorily.

Vacancy to be filled.

SEC. 261. After each challenge sustained the vacancy shall be filled before further challenges are made, and any new juror introduced may be challenged for cause, or if the party shall not have exhausted the number of peremptory challenges to which he is entitled, he may be challenged peremptorily.

CHAPTER V.

CONDUCT OF THE TRIAL.

Sec. 262. Order of procedure on trial; instructions and exceptions thereto.
Sec. 263. Jury may view property or place.
Sec. 264. Proceeding if jury become sick.
Sec. 265. Retirement of jury, how kept together.
Sec. 266. What papers jury may take upon retiring.
Sec. 267. Disagreement of jury as to testimony or law.

Sec. 268. If no verdict, action tried again.
Sec. 269. Adjournment of court and sealed verdict.
Sec. 270. Proceedings when jury have agreed, and of the verdict and polling the jury.
Sec. 271. How informal or insufficient verdict corrected.
Sec. 272. If jury separate, admonished by court.
Sec. 273. Witnesses may be excluded from court room.

Order of the trial

SEC. 262. When the jury has been sworn, the trial shall proceed in the following order, unless the court for good cause and special reasons otherwise directs:

First. The party on whom rests the burden of the issues may briefly state his case, and the evidence by which he expects to sustain it.

Second. The adverse party may then briefly state his defense, and the evidence he expects to offer in support of it.

Third. The party on whom rests the burden of the issues must first produce his evidence; the adverse party will then produce his evidence.

Fourth. The parties will then be confined to rebutting evidence, unless the court for good reason, in furtherance of justice, permits them to offer evidence in their original case.

Fifth. When the evidence is concluded, and either party desires special instructions to be given to the jury, such instructions shall be reduced to writing, numbered and signed by the party or his attorney asking the same, and delivered to the court.

12th ses. p 56

Sixth. When the argument of the cause is concluded, the court shall give such instructions to the jury as may be necessary, which instructions shall be in writing, and be numbered and signed by the judge; and the instructions so given may, in the discretion of the court, by the jury, be taken to their room when they retire to consider of their verdict, and, by them, shall be returned into court with their verdict in the case.

NOTE —Last paragraph of the sixth subdivision of section 262 from act of Feb 22, 1881.

Seventh. Where either party asks special instructions to be given to the jury, the court shall either give each instruction as requested, or positively refuse to do so, or give the instruction with a modification, and shall mark or endorse upon each instruction so offered in such manner that it shall distinctly appear what instructions were given in whole or in part, and, in like manner those refused, so that either party may except to the instructions as given or refused or modified, or to the modification. All instructions given by the court must be filed together with those refused, as a part of the record. If any party to the trial desires to except to any instruction given by the court, or to the refusal of the court to give an instruction asked for, or any modification thereof, he shall reduce such exception to writing, and file the same with the clerk before the cause is submitted to the jury.

View of property by jury.

SEC. 263. Whenever, in the opinion of the court, it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted in a body, under the charge of an officer, to the place which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent no person other than the person so appointed shall speak to them on any subject connected with the trial.

Proceedings in case juror become sick.

SEC. 264. If, after impannelling a jury, and before verdict, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case the trial may proceed with the other jurors, or a new jury may be sworn and the trial begun anew; or the jury may be discharged and a new jury then or afterwards impannelled.

Conduct of jury.

SEC. 265. After hearing the charge, the jury may either decide in court or retire for deliberation. If they retire they shall be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict, or are discharged by the court. The officer shall, to the utmost of his ability, keep the jury together, separate from other persons; he shall not suffer any communication to be made to them, or make any himself, unless by order of the court, except to ask them if they have agreed upon their verdict, and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

Jury entitled to certain papers.

SEC. 266. Upon retiring for deliberation, the jury may take with them all papers, except depositions, accounts, or account-books, which have been received as evidence in the case, or copies of such papers as ought not, in the opinion of the court be taken from the person having them in possession; and they may also take with them notes of the testimony or other proceedings, on the trial taken by themselves, or any of them, but none taken by any other person.

Jury may be brought into court for instruction.

SEC. 267. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court; upon their being brought into court the information required shall be given in presence of, or after notice to, the parties or counsel.

New trial in case of no verdict

SEC. 268. In all cases where a jury are discharged or prevented from giving a verdict by reason of accident or other cause, during the progress of the trial, or after the cause is submitted to them, the action may be again tried, immediately or at a future time, as the court shall direct.

Court open for jury, sealed verdict.

SEC. 269. While the jury are absent the court may adjourn from time to time, in respect to other business; but it shall be nevertheless deemed open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged. The court may direct the jury to bring in a sealed verdict at the opening of the court, in case of an agreement during a recess or adjournment for the day. A final adjournment of the court for the term shall discharge the jury.

Rendition of verdict.

SEC. 270. When the jury have agreed upon their verdict they must be conducted into court, their names called by the clerk, and their verdict rendered by their foreman. The verdict must be in writing, signed by the foreman, and must be read by the clerk to the jury, and the inquiry made whether it is their verdict. If any jurors disagree they must be sent out again; but if no disagreement be expressed, and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. Either party may require the jury to be polled, which is done by the court or clerk asking each juror if it is his verdict. If any one answers in the negative the jury must again be sent out.

Insufficient verdict.

SEC. 271. If the verdict be informal or insufficient in not covering the whole issue or issues submitted, or in any particular, the verdict may be corrected by the jury under the advice of the court, or the jury may be again sent out.

Separation of jury.

SEC. 272. If the jury are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse or suffer themselves to be addressed by any other person on the subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

13th ses. p 91

Exclusion of witnesses.

SEC. 273. Upon the trial of any civil cause hereafter tried in any court of the Territory of Montana, the court may, in its discretion, upon the request of either of the parties, plaintiff or defendant, exclude any or all of the witnesses for either party from the court room until said witness shall have been called to give in his testimony in the cause.

NOTE—Section 273, act of March 8th, 1883

CHAPTER VI.

THE VERDICT.

Sec. 274. Verdict, general or special defined.
Sec. 275. When may be general or special: special finding controls general verdict.
Sec. 276. When jury to find amount of recovery
Sec. 277. If for specific personal property, value to be assessed.
Sec. 278. Entry of clerk upon receiving verdict.

Verdict: general and special.

SEC. 274. The verdict of a jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of plaintiff or defendant; a special verdict is that by which the jury find the facts only, leaving the judgment to the court. The special verdict shall present the conclusions of fact as established by the evidence, and not the evidence to prove them: and those conclusions of fact shall be so presented as that nothing shall remain to the court but to draw from them conclusions of law.

General or special verdict as case may be.

SEC. 275. In an action for the recovery of money only, or specific property, the jury, in their discretion, may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict in writing upon all or any of the issues; and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding shall be filed with the clerk and entered upon the minutes. Where a special finding of facts shall be inconsistent with the general verdict the former shall control the latter, and the court shall give judgment accordingly.

Verdict: amount.

SEC. 276. When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a counter claim for the recovery of money is established, exceeding the amount of the plaintiff's claim as established, the jury shall also find the amount of the recovery.

Verdict in action for specific personal property.

SEC. 277. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant by his answer claim a return thereof, the jury, if their verdict be in favor of the plaintiff, or if, being in favor of the defendant, they also find that he is entitled to a return thereof, shall find the value of the property (but failure to find all of the facts mentioned in this section shall not invalidate the verdict), and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

Duty of clerk

SEC. 278. Upon receiving a verdict an entry shall be made by the clerk in the minutes of the court, specifying the time of trial, the names of the jurors and witnesses, and the verdict; and where a special verdict is found, either the judgment rendered thereon, or if the case be reserved for argument or further consideration, the order thus reserving it.

CHAPTER VII.

TRIAL BY COURT.

Sec. 279. How trial by jury may be waived.
Sec. 280. Judgment to be entered according to findings, etc.
Sec. 281. When reference may be ordered.
Sec. 282. Procedure on judgment upon issue of law.

Waiver of jury

SEC. 279. Trial by jury may be waived by the several parties to an issue of fact in actions arising on contract or for the recovery of specific real or personal property with or without damages, and, with the assent of the court, in other actions, in manner following.

First. By failing to appear at the trial.

Second. By written consent, in person or by attorney, filed with the clerk.

Third. By oral consent, in open court, entered in the minutes.

Trial by court; findings; exceptions.

SEC. 280. Upon a trial of issue of fact by the court, judgment shall be entered in accordance with the finding of the court, and the finding, if required by either party, shall be reduced to writing and filed with the clerk. In the finding filed the facts found and the conclusions of law shall be separately stated. In such cases no judgment shall be reversed on appeal, for want of a finding in writing, at the instance of any party who at the time of the submission of the cause shall not have requested a finding in writing and had such request entered in the minutes of the court; nor in cases tried by the court, by a commissioner, or a referee, shall the judgment be reversed on appeal, for defects in the finding, unless exceptions be made in the court below for a defect in the finding; and in cases of exceptions for defective findings, the particular point or issue upon which the party requires a finding to be made, or the particular defect to be remedied, shall be specifically and particularly designated; and upon failure of the court to remedy, or, when tried by a commissioner or referee, to cause to be remedied by such commissioner or referee, the alleged defect, the party moving shall be entitled to his exceptions, and the same shall be settled by the judge as in other cases. *Provided*, That such exceptions shall be filed in the court and served on the attorney of the adverse party within five days after receiving from or giving to the adverse party written notice of the filing and finding. *Provided*, That when any cause is tried and submitted upon a written statement of facts agreed to by the parties or their attorneys, such statement shall have the effect of a special verdict or finding of facts, and judgment shall be pronounced thereon as upon a special verdict or finding of facts; and in such case no finding of facts shall be made unless such statement shall fail to embrace all the facts proved and in issue, in which case any additional fact may be found upon evidence which is not repugnant to the agreed statement.

Taking of an account.

SEC. 281. On a judgment upon an issue of law, if the taking of an account be necessary to enable the court to complete the judgment, a reference may be ordered.

SEC. 282. On a judgment for the plaintiff upon an issue of law, he may proceed in the manner prescribed by the first two sub-divisions of section 245, upon the failure of defendant to answer. If judgment be for the defendant upon an issue of law, and the taking of an account or the proof of any fact be necessary to enable the court to complete the judgment, a reference may be ordered as in that section provided. Order of reference

CHAPTER VIII.

OF REFERENCES AND TRIALS BY REFEREES.

Sec. 283. Reference by agreement.
Sec. 284. Court may order a reference.
Sec. 285. Who may be, and oath of, referee.
Sec. 286. Grounds of objections to referee.
Sec. 287. Hearing of objection to referee.
Sec. 288. Report of referee, exceptions to.

SEC 283. A reference may be ordered upon the agreement of the parties, filed with the clerk or entered on the minutes— Reference by agreement

First. To try any or all of the issues in an action or proceeding, whether of fact or of law, and to report a finding and judgment thereon.

Second. To ascertain a fact necessary to enable the court to proceed and determine a case.

SEC. 284. When the parties do not consent the court may, upon application of either, or of its own motion, direct a reference in the following cases. Reference by court.

First. When the trial of an issue of facts requires the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or report upon any specific question of fact involved therein.

Second. When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect.

Third. When a question of fact other than upon the pleadings arises, upon motion or otherwise, in any stage of the action.

Fourth. When it is necessary for the information of the court in a special proceeding.

SEC. 285. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the court or judge shall appoint one or more referees, not Referees.

exceeding three, who reside in the county where the action or proceeding is triable, and against whom there is no legal objection, or the reference may be made to a court commissioner of the county where the cause is pending. Every referee, before acting as such, shall take and subscribe an oath (or affirmation), before some authorized officer, which shall be filed with the clerk of the court by which he is appointed, that he will honestly, impartially, and faithfully perform the duties of referee in the action or matter referred to him, as required by law, to the best of his knowledge and ability.

Objection to referee.

SEC. 286. Either party may object to the appointment of any person as referee on one or more of the following grounds:

First. A want of any of the qualifications prescribed by statute to render a person competent as a juror.

Second. Consanguinity or affinity within the third degree to either party.

Third. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent, to either party, or being a member of the family of either party, or a partner in business with either party, or being security on any bond or obligation for either party.

Fourth. Having served as a juror or been a witness on any trial between the same parties for the same cause of action.

Fifth. Interest on the part of such person in the event of the action, or in the main question involved in the action.

Sixth. Having formed or expressed an unqualified opinion or belief as to the merits of the action.

Seventh. The existence of a state of mind in such person evincing enmity against or bias to either party.

Trial of objection.

SEC. 287. The objection taken to the appointment of any person as referee shall be heard and disposed of by the court. Affidavits may be read and any person examined as a witness as to such objections.

Finding of referee.

SEC. 288. The referees or commissioner shall report their findings in writing to the court within ten days (or within such further time as may be allowed by the court) after the testimony shall have been closed and the facts found, and the conclusions of law shall be separately stated therein. The finding of the referees or commissioner upon the whole issue shall stand as the finding of the court, and upon filing of the finding with the clerk of the court judgment may be entered thereon in the same manner as if the action had been tried by the court. The finding of the referees or commissioner may be excepted to and reviewed in like manner as if made by the court. When the reference is to report the facts, the finding reported shall have the effect of a special verdict.

CHAPTER IX.

EXCEPTIONS.

Sec. 289. What are exceptions, and how regarded.
Sec. 290. What deemed to have been excepted to.
Sec. 291. Points of exception to be stated, and must be conformable to truth or be corrected.
Sec. 292. Form of exception to be brief.
Sec. 293. When, on motion for new trial exceptions deemed taken.
Sec. 294. Bills of exceptions, when to be signed.

Exceptions: when taken.

SEC. 289. An exception is an objection taken at the trial to a decision upon a matter of law, whether such trial be by jury, court or referees, and whether the decision be made during the formation of a jury, or in the admission of evidence, or in the charge of a jury, or at any other time, from the calling of the action for trial to the rendering of the verdict or decision; but no exceptions shall be regarded on a motion for a new trial or an appeal, unless the exception be material and effect the substantial rights of the parties.

Proceedings deemed excepted to.

SEC. 290. The verdict of the jury, the final decision in an action or proceeding, an interlocutory order, or decision finally determining the rights of the parties, or some of them; an order or decision of which an appeal may be taken; an order sustaining or overruling a demurrer, allowing or refusing to allow an amendment to a pleading, striking out a pleading or a portion thereof, refusing a continuance; an order made upon *ex parte* application, and an order or decision made in absence of a party—are deemed to have been excepted to.

Bill of exception.

SEC. 291. The point of the exception shall be particularly stated, except as provided in relation to instructions, and may be delivered in writing to the judge, or if the party require it, it shall be written down by the clerk. When delivered in writing or written down by the clerk it shall be made conformable to the truth or be at the time corrected until it is made so conformable. When not delivered in writing, or written down as above, it may be entered in the judge's minutes, and afterwards settled in a statement of the case as provided in this act: *Provided*, That if the judge shall in any case refuse to allow an exception in accordance with the facts, any party aggrieved thereby may petition the supreme court for leave to prove the same, and shall have the right to do so in such mode and manner, and according to such regulations as the supreme court may by rules prescribe.

Form of exception

SEC. 292. No particular form of exception shall be required. The objection shall be stated with so much of the evidence or other matter as is necessary to explain it, but no more, and the whole as briefly as possible.

Delayed decision or report deemed excepted to

SEC. 293. When a cause has been tried by the court or by the referees, and the decision or report is not made immediately after the closing of the testimony, the decision or report shall be deemed excepted to on motion for a new trial, or on appeal, without any special notice that an exception is taken thereto.

R. S., p. 191.

Exception to be signed by judge

SEC. 294. All bills of exceptions shall be reduced to form, unless noted by the clerk, and signed during the term in which the same is tried, except in cases where the counsel consent, or the judge, by an entry on the record, direct that it may be prepared in vacation, and signed *nunc pro tunc*. The bill of exceptions must be signed by the judge who tried the cause, and if he has inadvertently omitted to sign a bill of exceptions, he may, on motion, be permitted to do so, althought his term of office has expired, or said office has otherwise become vacant.

NOTE.—Section 294. act of Feb. 13, 1874.

CHAPTER X.

NEW TRIALS.

Sec. 295. New trial defined.
Sec. 296. Causes for new trial.
Sec. 297. How motion for new trial made.
Sec. 298. Notice of motion for new trial: First, upon affidavits. Second, upon bill of exceptions. Third, upon statement. Fourth, insufficiency of evidence.
Sec. 299. When motion heard and what references may be made.

Sec. 300. When proceedings may be stayed.
Sec. 301. Bill of exceptions on an appeal from an order deciding motion for a new trial.

New trial defined

SEC. 295. A new trial is a re-examination of an issue of fact in the same court after a trial and decision by a jury, court, or referees.

New trial granted in certain cases.

SEC. 296. The former verdict or other decision may be vacated and a new trial granted on the application of the party aggrieved, for any of the following causes materially affecting the substantial rights of said party:

First. Irregularity in the proceedings of the court, jury, or adverse party, or any order of the court, or abuse of discretion, by which either party was prevented from having a fair trial.

Second. Misconduct of the jury; and whenever any one or more of the jurors shall have been induced to assent to any general or special verdict, or to a finding on any question or questions submitted to them by the court, by a resort to the determination of chance, such misconduct may be proved by the affidavits of any one or more of the jurors.

Third. Accident or surprise, which ordinary prudence could not have guarded against.

Fourth. Newly discovered evidence, material for the party making the application.

12th ses. p 10

Fifth. Excessive damages appearing to have been given under the influence of passion or prejudice.

Sixth. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

Seventh. Error in law occurring at the trial and excepted to by the party making the application.

NOTE—The fifth, sixth and seventh subdivisions of section 296 from Act of Feb 23, 1881

Application.

SEC. 297. When the application is made for a cause mentioned in the first, second, third, and fourth subdivisions of the last section, it must be made upon affidavits; for any other cause it may be made at the option of the moving party, either upon the minutes of the court, or a bill of exceptions, or a statement of the case prepared as hereinafter provided.

Notice of motion for new trial.

SEC. 298. The party intending to move for a new trial must, within ten days after the verdict of the jury, if the action was tried by a jury, or after notice of the decision of the court or referee, if the action was tried without a jury, file with the clerk and serve upon the adverse party a notice of his intention, designating the grounds upon which the motion will be made, and whether the same will be made upon affidavits or the minutes of the court, or a bill of exceptions, or a statement of the case.

First. If the motion is to be made upon affidavits, the moving party must, within ten days after serving the notice, or such further time as the court in which the action is pending or a judge thereof may allow, file such affidavits with the clerk and serve a copy upon the adverse party, who shall have ten days to file counter affidavits, a copy of which must be served upon the moving party.

Second. If the motion is to be made upon a bill of exceptions and no bill has already been settled as hereinbefore provided, the moving party shall have the same time after service of the notice to prepare and obtain a settlement of a bill of exceptions as is provided after the entry of judgment, or after receiving notice of such entry provided by section 291, and the bill shall be prepared and settled in a similar manner. If a bill of exceptions has been already settled and filed when the notice of motion is given, such bill shall be used on the motion.

Third. If the motion is to be made upon a statement of the case, the moving party must, within ten days after the service of the notice, or such further time as the court in which the action is pending, or the judge thereof, may allow, prepare a draft of the statement, and serve the same, or a copy thereof, upon the adverse party. If such proposed statement be not agreed to by the adverse party, he must, within ten days thereafter, prepare amendments thereto, and serve the same, or a copy thereof, upon the moving party. If the amendments be adopted, the statement shall be amended accordingly, and then presented to the judge who tried or heard the cause for settlement, or be delivered to the clerk of the court for the judge. If not adopted, the proposed statement and amendments shall, within ten days thereafter, be presented by the moving party to the judge, upon five days notice to the adverse party, or delivered to the clerk of the court for the judge, and thereupon the same proceedings for the settlement of the statement shall be taken by the parties and clerk and judge as are required for the settlement of bills of exception by section 291. If the action was heard by a referee, the same proceedings shall be had for the settlement of the statement by him as are required by that section for the settlement of bills of exception by a referee. If no amendments are served within the time designated, or, if served, are allowed, the proposed statement and amendments, if any, may be presented to the judge or referee for settlement without notice to the adverse party.

When the notice for the motion designates as the ground of the motion, the insufficiency of the evidence to justify the verdict or other decision, the statement shall specify the particulars in which such evidence is alleged to be insufficient. When the notice designates as the ground of motion, errors in law occurring at the trial, and excepted to by the moving party, the statement shall specify the particular errors upon which the party will rely. If no such specifications be made, the statement shall be disregarded on the hearing of the motion. It is the duty of the judge or referee, in settling the statement, to strike out of it all redundant and useless matter, and to make the statement truly represent the case, notwithstanding the assent of the parties to such redundant or useless matter, or to any inaccurate statement. When settled the statement shall be signed by the judge or referee, with his certificate to the effect that the same is allowed, and shall then be filed with the clerk.

Fourth. When the motion is to be made upon the minutes of the court, and the ground of the motion is the insufficiency of the evidence to justify the verdict or other decision, the notice of motion must specify the particulars in which the evidence is alleged to be insufficient, and if the ground of the motion be errors in law occurring at the trial and excepted to by the moving party, the notice must specify the particular errors upon which the party will rely. If the notice do not contain the specifications here indicated, when the motion is made on the minutes of the court, the motion must be denied.

Hearing of application.

SEC. 299. The application for a new trial shall be heard at the earliest practicable period after the notice of the motion, if the motion is to be heard upon the minutes of the court, and in other cases after the affidavits, bills of exception, or statement, as the case may be, are filed, and may be brought to a hearing upon motion of either party. On such hearing reference may be had in all cases to the pleadings and orders of the court on file, and when the motion is made on the minutes, reference may also be had to any depositions, documentary evidence, and phonographic report of the testimony on file.

Stay of proceedings.

SEC. 300. On all cases where notices of intention to move for a new trial in accordance with the provisions of chapter ten of the civil practice act, entitled "new trial," shall have been given, the judge of the court in which the trial shall have been had may, upon such terms as in his opinion shall be just, make an order staying proceedings in the cases until the motion for new trial shall have been disposed of.

R. S., p. 191. Bill of exceptions.

SEC. 301. When a motion for a new trial is heard and decided upon the minutes of the judge, and an appeal is taken from the decision, a bill of exceptions must be settled in the usual form, upon which the argument of the appeal must be had.

NOTE —Section 301 from act of Feb. 13, 1874.

CHAPTER XI.

THE MANNER OF GIVING AND ENTERING JUDGMENT.

Sec. 302. Judgment entered upon verdict; in favor of defendant for excess.
Sec. 303. Judgment for recovery of personal property.
Sec. 304. Clerk to keep a "Judgment Book."
Sec. 305. Judgment after death of party no lien on real property.
Sec. 306. Judgment roll, what constitutes.
Sec. 307. Lien of judgment.
Sec. 308. Judgment docket, how kept.
Sec. 309. Docket open during office hours.
Sec. 310. Transcript filed in another county to be a lien.
Sec. 311. Entry of satisfaction of judgment.

Entry of judgment.

SEC. 302. When trial by jury has been had, judgment shall be entered by the clerk, in conformity to the verdict, within twenty-four hours after the rendition of the verdict, unless the court order the case to be reserved for argument or further consideration, or grant a stay of proceedings.

When the case is reserved for argument or further consideration, as mentioned in this section, it may be brought by either party before the court for argument.

If a counter claim, established at the trial, exceed the plaintiff's demand, so established, judgment for the defendant shall be given for the excess, or if it appear that the defendant is entitled to any other affirmative relief, judgment shall be given accordingly.

Judgment in replevin

SEC. 303. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession or the value thereof, in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff and the defendant claim a return thereof, judgment for the defendant may be for a return of the property or the value thereof, in case a return cannot be had, and damages for taking and withholding the same.

Judgment book

SEC. 304. The clerk shall keep among the records of court a book for the entry of judgments, to be called the "Judgment Book," in which each judgment shall be entered, and shall specify clearly the relief granted or other determination of the action.

Judgment after death of party

SEC. 305. If a party die after a verdict or decision upon any issue of fact, and before judgment, the court may nevertheless render judgment thereon; such judgment shall not be a lien on the real property of the deceased party, but shall be payable in the course of administration on his estate.

Judgment roll.

SEC. 306. Immediately after entering the judgment, the clerk shall attach together and file the following papers, which shall constitute the judgment roll:

First. In case the complaint be not answered by any defendant, the summons with the affidavit or proof of service, and the complaint, with a memorandum endorsed upon the complaint, that the default of the defendant in not answering was entered, and a copy of the judgment.

Second. In all other cases, the summons, pleadings, verdict of the jury, or finding of the court, commissioner or referee, all bills of exceptions taken and filed in said action, copies of orders sustaining or overruling demurrers, a copy of the judgment, and copies of any orders relating to a change of parties.

Judgment lien.

SEC. 307. Immediately after filing a judgment roll the clerk shall make the proper entries of the judgment, under appropriate heads, in the docket kept by him; and from the time the judgment is docketed it shall become a lien upon the real property of the judgment debtor, not exempt from execution, in the county, owned by him at the time, or which he may afterward acquire, until said lien expires. The lien shall continue for six years, unless the judgment be previously satisfied.

Judgment docket.

SEC. 308. The docket mentioned in the last section is a book which the clerk shall keep in his office, with each page divided into eight columns, and headed as follows: Judgment debtors; judgment creditors; judgment time of entry; where entered into the judgment book; appeals, when taken; judgment of appellate court; satisfaction of judgment, when entered. If judgment be for the recovery of money or damages, the amount shall be stated in the docket, under the head of judgment; if the judgment be for any other relief, a memorandum of the general character of the relief shall be stated. The names of the defendants shall be entered in the docket in alphabetical order.

Inspection of docket.

SEC. 309 The docket kept by the clerk shall be open at all times during office hours for the inspection of the public, without charge; and it shall be the duty of the clerk to arrange the several dockets kept by him in such manner as to facilitate their inspection.

Filing transcript in another county.

SEC. 310. A transcript of the original docket, certified by the clerk, may be filed with the recorder of any other county, and from the time of filing the judgment shall become a lien upon all the real property of judgment debtor, not exempt from execution in such county, owned by him at the time, or which he may afterwards acquire, until the said lien expires. The lien shall continue for six years, unless the judgment be previously satisfied.

Satisfaction of judgment.

SEC. 311. Satisfaction of a judgment may be entered in a clerk's docket upon the execution returned satisfied, or upon an acknowledgement of satisfaction filed with the clerk, made in the manner of an acknowledgement of a conveyance of real property, by the judgment creditor, or by his indorsement on the face, or on the margin of the record of the judgment, or by the attorney, unless a revocation of his authority is filed. Whenever a judgment is satisfied in fact, otherwise than upon an execution, the party or attorney must give such acknowledgement, or make such indorsement, and upon motion, the court may compel it, or may order the entry of satisfaction to be made without it.

TITLE IX.

OF THE EXECUTION OF THE JUDGMENT IN CIVIL ACTIONS.

CHAPTER I.

THE EXECUTION.

Sec. 312. Execution may issue within six years.
Sec. 313. Form of writ; shall be directed to sheriff and require him: First: Against property of debtor. Second: Against property in hands of representatives. Third: Against the person. Fourth: For delivery of possession.
Sec. 314. What to direct if all defendants not served with summons.
Sec. 315. Return of writ; duty of clerk if real estate levied on.
Sec. 316. Mode of procedure in enforcing execution in different cases.
Sec. 317. How issued and enforced in case of the death of a party.
Sec. 318. May issue to another county where defendant has property,
Sec. 319. Property liable to execution; and not affected until levy.
Sec. 320. Property levied upon claimed by third party.
Sec. 321. Property exempt from execution.
Sec. 322. Homestead exemption.
Sec. 323. Homestead exemption not to affect certain liens.
Sec. 324. Selection of homestead.
Sec. 325. Proceedings if plaintiff dissatisfied with selection of homestead.
Sec. 326. When dwelling-house on leased land exempt.
Sec. 327. Homestead exempt after the death of owner.
Sec. 328. Removal or sale not to affect exemption.
Sec. 329. Right of widow to homestead.
Sec. 330. Only to apply to married men or head of family.
Sec. 331. Manner in which writ shall be executed.
Sec. 332. Notice of sale of property on execution.
Sec. 333. Penalty of selling without notice.

Sec. 334. Sales: judgment debtor may direct order of sale.

Sec. 335. If purchaser refuse to pay, to be sold again, and bidder liable for loss.

Sec. 336. Subsequent bids of persons refusing to pay may be rejected.

Sec. 337. Liability of officer under last two sections.

Sec. 338. Delivery of property and certificate to purchaser.

Sec. 339. Certificate of sale and payment.

Sec. 340. Rights of purchaser to real property; certificate of sale.

Sec. 341. Real estate sold may be redeemed.

Sec. 342. Right of judgment debtor or redemptioner to redeem from purchaser.

Sec. 343. Right to redeem from redemptioner.

Sec. 344. Payments. to whom made under last two sections.

Sec. 345. Procedure for redemption.

Sec. 346. Court may restrain waste until redemption.

Sec. 347. If purchaser be evicted he may recover price paid, and original judgment may be revived.

Sec. 348. Contribution between judgment debtors and notice of claim thereof.

Sec. 349. Limitation of the issuing of an execution.

Execution; when issued

SEC. 312. The party in whose favor the judgment is given may, at any time within six years after the entry thereof, issue a writ of execution for its enforcement as prescribed in this chapter.

SEC. 313. The writ of execution shall be issued in the name of the people of the Territory of Montana, sealed with the seal of the court, and subscribed by the clerk, and shall be directed to the sheriff, and shall intelligibly refer to the judgment, stating the court, the county where the judgment roll is filed, and if it be for money, the amount thereof, and the amount actually due thereon, and shall require the sheriff substantially as follows:

Execution: to whom directed, and requirements.

First. If it be against the property of the judgment debtor, it shall require the sheriff to satisfy the judgment with interest, out of the personal property of such debtor; and if sufficient personal property cannot be found, then out of his real property; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the judgment was docketed, or at any time thereafter; or if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the recorder of such county, stating such day, or any time thereafter.

Second. If it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the sheriff to satisfy the judgment, with interest, out of such property.

Third. If it be against the person of the judgment debtor, it shall require the sheriff to arrest such debtor and commit him to the jail of the county until he pay the judgment, with interest, or be discharged according to law.

Fourth. If it be for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at any time require the sheriff to satisfy any costs, damages, rents or profits recovered by the same judgment out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was rendered, to be specified therein; if a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of the real property, as provided in the first sub-division of this section.

Execution: where all defendants not served

SEC. 314. When a writ of execution is issued on a judgment recovered against two or more persons in an action upon a joint contract, in which action all the defendants were not served with summons, or did not appear, it shall direct the sheriff to satisfy the judgment out of the joint property of all the defendants and the individual property only of the defendants who were served or who appeared in the action.

Return of execution

SEC. 315. The execution may be made returnable at any time not less than ten nor more than sixty days after its receipt by the sheriff, to the clerk with whom the judgment roll is filed. When the execution shall have been returned, it shall be the duty of the clerk to attach the same to the judgment roll. If any real estate be levied upon, the clerk shall record the execution and return thereof at large, and certify the same under his hand as true copies, in a book to be called the "Execution Book," which book shall be indexed with the names of plaintiffs and defendants in execution, alphabetically arranged, and kept open at all times during office hours, for the inspection of the public, without charge, and shall be evidence of the contents of the originals, whenever they, or any part therof, may be destroyed, lost or mutilated.

Enforcement of judgment in certain cases.

SEC. 316. When the judgment is for money or the possession of real or personal property, the same may be enforced by a writ of execution; and if the judgment direct that the defendant be arrested, the execution may issue against the person of the judgment debtor after the return of an execution against his property unsatisfied in whole or [in] part. When the judgment requires the sale of the property the same may be enforced by a writ reciting such judgment, or the material parts thereof, and directing the proper officer to execute the judgment by making the sale and applying the proceeds in conformity therewith. When the judgment requires the performance of any other act than as above designated, a certified copy of the judgment may be served upon the party against whom the same is rendered, or upon the person or officer required thereby or by law to obey the same, and obedience thereto may be enforced by the court.

Execution after death of party.

SEC. 317. Notwithstanding the death of a party after judgment, execution thereon may be issued in case of the death of the plaintiff, the same as if he were living, upon the application of his executor or administrator, or successor in interest, by the court in which the judgment was rendered or exists; and in case of the decease of the defendant, if the judgment be for the recovery of real or personal property, execution may be issued and executed against the property recovered in the same manner and with the same effect as if he were still living.

Execution: to whom issued.

SEC. 318. Where the execution is against the property of the judgment debtor it may be issued to the sheriff of any county in the territory. Where it requires the delivery of real or personal property, it shall be issued to the sheriff of the county where the property, or some part thereof, is situated. Executions may be issued at the same time to different counties.

Property liable to execution.

SEC. 319. All goods, moneys, chattels, and other property, both real and personal, or any interest therein of the judgment debtor not exempt by law, and all property and rights of property, seized and held under attachment in the action, are liable to execution. Shares and interests in any corporation or company, and debts and credits, and all other property, both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery, may be attached on execution in like manner as upon writs of attachment. Gold dust must be returned by the officer as so much money collected, at its current value, without exposing the same to sale. Until a levy property is not affected by the execution.

Claim of third party.

SEC. 320. If any personal property levied upon be claimed under oath by a third party as his property, the sheriff shall deliver the property to such third person within five days after notice to plaintiff's attorney, if the plaintiff resides in the county, otherwise ten days, unless the plaintiff gives the sheriff good and sufficient bond to indemnify him against any loss or damage by reason of holding such property.

Property exempt from execution.

SEC. 321. The following property shall be exempt from execution, except as herein otherwise provided:

In all cases

First. In all cases all wearing apparel of the judgment debtor and family; also all chairs, tables, desks, and books, to the value of one hundred dollars; and also all necessary household, table, and kitchen furniture of the judgment debtor, including stoves, stovepipes, and stove furniture, beds, bedding, and bedsteads, and provisions and fuel provided for individual or family use sufficient for two months, and also one horse, two cows with their calves, two swine, and fifty domestic fowls.

In addition to the above mentioned property, there shall be exempt the following named property:

To a farmer

First. To a farmer: Farming utensils or implements of husbandry, not exceeding in value six hundred dollars; also, two oxen, or one horse or mule, and their harness, one cart or wagon, and food for such oxen, horse, cows, or mule, for three months; also, all seeds, grain, or vegetables, actually provided, reserved, or on hand, for the purpose of planting or sowing at any time within six months, not exceeding in value the sum of two hundred dollars.

To mechanic or artizan

Second. To a mechanic or artizan: Tools or implements necessary to carry on his trade.

To surgeon, physician and dentist

Third. To a surgeon physician or surgeon and dentist: The instruments and chest necessary to the exercise of his profession, with his scientific and professional libraries.

To attorneys and ministers

Fourth. To attorneys at law and ministers of the gospel: The law libraries of attorneys and counsellors, and the libraries of ministers of the gospel.

To miner.

Fifth. To a miner: His cabin or dwelling, not exceeding in hose, windlasses, derrick, cars, pump, tools, implements, and appliances necessary for carrying on any kind of mining operations, not exceeding in value the aggregate sum of five hundred dollars, and one horse, mule, or two oxen, with their harness, and food for such horse, mule, or oxen, for three months, when necessary to be used for any whim. windlass, derrick, car, pump, or hoisting gear.

To cartman, huckster, peddler, teamster, laborer

Sixth. To a cartman, huxter, peddler, teamster, or laborer: One horse or mule, or two oxen, and their harness, and one cart or wagon, by the use of which such person habitually earns his living; and one vehicle and harness or other equipments used by a physician or surgeon or minister of the gospel in making his professional visits, with food for such horse, mule, or oxen, for three months.

To fire company

Seventh. All fire engines, hooks and ladders, with the carts, trucks, and carriages, hose, buckets, implements, and apparatus thereto appertaining, and all furniture and uniforms of any fire company or department, organized under any law of this territory.

Arms, etc

Eighth. All arms, uniforms, and accoutrements, required by law to be kept by any person.

Public property

Ninth. All court houses, jails, public offices and buildings, lots, grounds, and personal property; the fixtures, furniture, books, papers, and appurtenances belonging and pertaining to the court house, jail, and public offices belonging to any county of this territory; and all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings for the use of the fire departments and military organizations, and the lots of ground thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by such town or city to health, ornament, or public use, or for the use of any fire or military company organized under the laws of this territory; but no article or species of property mentioned in this section shall be exempt from execution issued upon a judgment recovered for its price, or upon a mortgage thereon.

Earnings for personal services.

Tenth. The earnings of the judgment debtor for his personal services rendered at any time within thirty days next preceding the levy of the execution (or levy of attachment) when it shall be made to appear by the debtor's affidavit, or otherwise, that such earnings are necessary for the use of his family residing in this territory, supported wholly or in part by his labor.

No exemption from purchase price.

In addition to the property now exempted by law from sale or levy on execution, there shall be exempted one sewing machine, of a value not exceeding one hundred dollars, in actual use by each debtor, or family of the debtor: *Provided*, That nothing in this section shall be held or construed to exempt any property belonging to any person who is not a *bona fide* resident of this territory.

Exemption of homestead.

SEC. 322. A homestead consisting of any quantity of land not exceeding one hundred and sixty acres used for agricultural purposes, and the dwelling house thereon, and its appurtenances, to be selected by the owner thereof, and not included in any town plot, city, or village; or, instead thereof, at the option of the owner, a quantity of land not exceeding in amount one-fourth of an acre, being within a town plot, city, or village, and the dwelling house thereon, and its appurtenances, owned and occupied by any resident of this territory, shall not be subject to forced sale on execution, or any other final process from a court: *Provided*, Such homestead shall not exceed in value the sum of two thousand five hundred dollars.

Lien not affected by exemption.

SEC. 323. Such exemption shall not affect any laborer's or mechanic's lien, or extend to any mortgage thereon lawfully obtained; but such mortgage or other alienation of such homestead by the owner thereof, if a married man, shall be void unless the wife join in the execution of the conveyance thereof; and nothing contained in this act shall be so construed as to affect any existing debt or debts contracted in this territory prior to the passage of this act.

Designation of homestead.

SEC. 324. Whenever a levy shall be made upon the lands or tenements of a householder whose homestead has not been selected and set apart by metes and bounds, such householder may notify the officer at the time of making such levy, of what he regards as his homestead, with a description thereof, within the limits above described, and the remainder alone shall be subject to sale under such levy.

If plaintiff dissatisfied a survey shall be made.

SEC. 325. If the plaintiff in execution shall be dissatisfied with the quantity of land selected and set apart as aforesaid, the officer making such levy shall cause the same to be surveyed, beginning at the point to be designated by the owner, and set off in a compact form, including the dwelling house and its appurtenances, to the amount specified in section 322 of this act; and the expense of such survey shall be chargeable on the execution and collected thereupon, if it shall appear after such survey that the owner of such land did not correctly state his metes and bounds, otherwise the expense of such survey shall be borne by the person directing the same.

Exemption of house on land owned by another.

SEC. 326. Any person owning and occupying any dwelling house on land not his own, which land he shall be rightfully in possession of by lease or otherwise, and claiming such house as his homestead, shall be entitled to the exemption of such house.

Homestead exempt after death of owner.

SEC. 327. Real estate exempt from forced sale on execution or other final process, as the homestead of a family, shall likewise, after the death of the owner thereof, be exempt from the payment of his debts, in all cases in which any infant children of the said owner shall survive him; and no executor or administrator shall have a right to the possession of any real estate so exempted, or to the rents or profits of the same.

Exemption not affected by removal or sale.

SEC. 328. If the owner of a homestead may remove therefrom, or sell and convey the same, such removal or sale and conveyance shall not render such homestead subject or liable to forced sale on execution, or other final process issued against such owner; nor shall any judgment, or decree of a court be a lien on such homestead, for any purpose whatever: *Provided*, That this act shall not be construed as to in any manner relate to judgments or decrees rendered on the foreclosure of mortgages either equitable or legal.

Homestead descends to widow.

SEC. 329. On the death of the owner of such homestead, the same shall descend to his widow, and she shall take and hold the same during her natural life, free from the incumbrance of all judgments and claims against the deceased or his estate, except mortgages lawfully executed thereon.

Act March 10, 1887

To whom exemption applies.

SEC. 330. The exemption contained in this chapter shall only apply to married men or the head of a family and none of the personal property herein menioned shall be exempt from attachment or execution for the wages of any clerk, mechanic, laborer or servant.

NOTE—Section 330 from act of March 10, 1887.

Levy under execution.

SEC. 331. The sheriff must execute the writ against the property of the judgment debtor, by levying upon a sufficient amount of property, if there be sufficient; collecting or selling the things in action, and selling the other property, and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment. Any excess of the proceeds over the judgment and accruing costs must be returned to the judgment debtor, unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within the view of the sheriff, he must levy only on such part of the property as the judgment debtor may indicate, if the property indicated be amply sufficient to satisfy the judgment and costs.

Notice of sale.

SEC. 332. Before the sale of property on execution, notice shall be given as follows:

First. In case of perishable property, by posting written notice of the time and place of sale in three public places of the township or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property.

Second. In case of other personal property, by posting a similar notice in three public places in the township or city where the sale is to take place not less than five nor more than ten days successively.

Third. In case of real property, by posting a similar notice, particularly describing the property, for twenty days successively, in three public places of the township or city where the property is situated, and also where the property is to be sold, and publishing a brief notice of such sale once a week for the same period in some newspaper published in the county, if there be one, which notice shall be substantially as follows:

JOHN DOE
vs.
RICHARD ROE.
SHERIFF'S SALE.

To be sold at sheriff's sale on the ——— day of ———, 18—, at ——— [Here insert a brief description of property.] Signed,

JOHN DOE, *Sheriff.*

Any sheriff publishing a notice not in accordance with this form, and which shall cost more than such a notice, shall not be entitled to any costs for the publication of the same, but shall be personally liable for the payment of such publication.

Penalty for selling without notice, or for destroying notice.

SEC. 333. An officer selling without the notice prescribed by the last section shall forfeit five hundred dollars to the aggrieved party, in addition to his actual damages, and a person wilfully taking down or defacing the notice posted, if done before the sale or the satisfaction of the judgment (if the judgment be satfied before sale), shall forfeit five hundred dollars.

Manner of selling under execution.

SEC. 334. All sales of property under execution shall be made at auction to the highest bidder, and shall be made between the hours of nine in the morning and five in the afternoon. After sufficient property has been sold to satisfy the execution no more shall be sold. Neither the officer holding the execution nor his deputy shall become a purchaser or be interested in any purchase at such sale. When the sale is of personal property capable of manual delivery, it shall be within view of those that attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, and consisting of several known lots or parcels, they shall be sold separately, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be thus sold. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately; and the sheriff shall be bound to follow such directions.

Proceeding when purchaser refuses to pay.

SEC. 335. If a purchaser refuse to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss be occasioned thereby the officer may recover the amount of such loss, with costs, from the bidder so refusing, in any court of competent jurisdiction.

Subsequent bid may be rejected

SEC. 336. When a purchaser refuses to pay, the officer may, in his discretion, thereafter reject any subsequent bid of such person.

Construction

SEC. 337. The two preceding sections shall not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser and the amount collected from the purchaser refusing to pay.

Delivery of personal property sold.

SEC. 338. When the purchaser of any personal property capable of manual delivery shall pay the purchase money, the officer making the sale shall deliver to the purchaser the property, and, if desired, shall execute and deliver to him a certificate of the sale and payment. Such certificate shall convey to the purchaser all the right, title, and interest which the debtor had in and to such property on the day the execution was levied.

Certificate in case property cannot be delivered.

SEC. 339. When the purchaser of any personal property not capable of manual delivery shall pay the purchase money, the officer making the sale shall execute and deliver to the purchaser a certificate of sale and payment. Such certificate shall convey to the purchaser all right, title, and interest which the debtor had in and to such property on the day the execution was levied.

Sale of real estate; whether absolute or subject to redemption

SEC. 340. Upon a sale of real property the purchaser shall be substituted to and acquire all the right, title, and interest and claim of the judgment debtor therein, and when the estate is less than a lease-hold of two years' unexpired term the sale shall be absolute; in all other cases the property shall be subject to redemption as provided in this chapter. The officer shall give to the purchaser a certificate of sale containing—

Certificate of sale.

First. A particular description of the real property sold.

Second. The price bid for each distinct lot or parcel.

Third. The whole price paid.

Fourth. When subject to redemption it shall be so stated.

A duplicate of such certificate shall be filed by the officer in the office of the recorder of the county.

Redemption.

SEC. 341. Property sold subject to redemption, as provided in the last section, or any part separately, may be redeemed in the manner hereinafter provided, by the following persons or their successors in interest:

First. The judgment debtor or his successor in interest in the whole or in any part of the property.

Second. A creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold.

The persons mentioned in the second subdivision of this section are in this chapter termed redemptioners.

Time for redemption.

SEC. 342. The judgment debtor, or redemptioner, may redeem the property from the purchaser any time within six months after the sale, on paying the purchaser the amount of his purchase, with two per cent. a month thereon in addition up to the time of redemption, together with the amount of any assessment or taxes which the purchaser may have paid thereon after purchase, and interest on such amount, and if the purchaser be also a creditor, having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such lien, with interest.

Time for subsequent redemption.

SEC. 343. If the property be so redeemed by a redemptioner, another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner, on paying the sum paid on such last redemption, with four per cent. thereon in addition, and the amount of any assessment or taxes which the last redemptioner may have paid thereon after the redemption by him, with interest on such amount, and in addition to the amount of any liens held by said last redemptioner prior to his own, with interest; but the judgment under which the property was sold need not be so paid as a lien.

The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner, within sixty days after the last redemption, on paying the sum paid on the last previous redemption, with four per cent. thereon in addition, and the amount of any assessments or taxes which the last previous redemptioner paid after the redemption by him, with interest thereon, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own, with interest.

Notice of redemption.

Written notice of redemption must be given to the sheriff, and a duplicate filed with the recorder of the county: and if any taxes or assessments are paid by the redemptioner, or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the sheriff and filed with the recorder; and if such notice be not filed, the property may be redeemed without paying such tax, assessment, or lien. If no redemption be made within six months after the sale the purchaser or his assignee is entitled to a conveyance; or, if so redeemed, whenever sixty days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner or assignee is entitled to a sheriff's deed; but in all cases the judgment debtor shall have the entire period of six months from the date of the sale to redeem the property. If the judgment debtor redeem he must make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeem, the effect of the sale is terminated, and he is restored to his estate. Upon a redemption by the debtor, the person to whom the payment is made must execute and deliver to him a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgments of conveyances

If no redemption purchaser entitled to conveyance.

Certificate of redemption.

of real property. Such certificate must be filed and recorded in the office of the recorder of the county in which the property is situated, and the recorder must note the record thereof in the margin of the record of the certificate of such sale.

To whom payments may be made

SEC. 344. The payments mentioned in the last two sections may be made to the purchaser or redemptioner, as the case may be, or for him, to the officer who made the sale, or, in case his term of office has expired, then to his successor in office; and in all cases when, under the provisions of this act, a purchaser of property at execution sale shall be entitled to a conveyance of the same, such conveyance shall be executed to him by the officer who made the sale, if he still be in office, but in case the officer who made the sale be not in such office at the time the purchaser may be entitled to such conveyance, then the conveyance shall be executed by his successor in office.

Duty of redemptioner.

SEC. 345. A redemptioner shall produce to the officer or person from whom he seeks to redeem, and serve with his notice to the sheriff:

First. A copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court or of the county where the judgment is docketed; or, if he redeem upon a mortgage or other lien, a note of the record thereof certified by the recorder.

Second. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself, or of a subscribing witness thereto; and,

Third. An affidavit by himself or his agent, showing the amount then actually due on the lien.

Waste may be restrained.

SEC. 346. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted, with or without notice, on the application of the purchaser or the judgment creditor. But it shall not be deemed waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it, in the same manner in which it was previously used: or to use it in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or to use wood or timber on the property therefor, or for the repair of fences, or for fuel for his family while he occupies the property.

SEC. 347. If the purchaser of real property sold on execution, or his successor in interest, be evicted there-

Proceedings in case title fails because or irregularity.

from, in consequence of irregularities in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid with interest from the judgment creditor. If the purchaser of property at sheriff's sale, or his successor in interest, fail to recover possession, in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the court having jurisdiction thereof shall, on petition of such party in interest, or his attorney, revive the original judgment for the amount paid by such purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore; and, when so revived, the said judgment shall have the same effect as an original judgment of the said court of that date, and bearing interest as aforesaid; and any other or after acquired property, rents, issues, or profits of the said debtor shall be liable to levy and sale under execution, in satisfaction of such debt: *Provided*, That no property of such debtor, sold *bona fide* before the filing of such petition, shall be subject to lien of said judgment. *And provided, further*, That notice of the filing of such petition shall be made by filing a notice thereof in the recorder's office of the county where such property may be situated, and that said judgment shall be revived in the name of the original plaintiff or plaintiffs, for the use of said petitioner, the party in interest.

Contribution

SEC. 348. When property liable to an execution against several persons is sold thereon, and more than a due proportion of the judgment is satisfied out of the proceeds of the sale of property of one of them, or one of them pays, without a sale, more than his proportion, he may compel contribution from the others; and when a judgment is against several and is upon an obligation of one of them, as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel re-payment from the principal. In such case the person so paying or contributing is entitled to the benefit of the judgment to enforce contribution or re-payment, if, within ten days after his payment, he file with the clerk of the court where judgment was rendered, notice of his payment and claim to contribution or re-payment. Upon a filing of such notice, the clerk must make an entry thereof in the margin of the docket.

R. S, p 190. Execution after five years.

SEC. 349. After the lapse of five years from the entry of judgment, an execution can only be issued by leave, of the court, upon motion, with personal notice to the adverse party, unless he be absent, or non-resident, or cannot be found, to make such service, in which case service may be made by publication, or in such other manner as the court shall direct; such leave shall not be given unless it be established by the oath of the party, or other satisfactory proof, that the judgment, or some part thereof, remains unsatisfied and due; but the leave shall not be necessary when the execution has been issued on the judgment within the five years, and returned unsatisfied in whole or in part.

NOTE—Section 349 from act of Feb 13th, 1874.

CHAPTER II.

PROCEEDINGS SUPPLEMENTARY TO EXECUTION.

Sec. 350. When execution returned unsatisfied, judgment creditor entitled to an order of court requiring debtor to answer concerning his property.
Sec. 351. Procedure to compel debtor to answer.
Sec. 352. Sheriff's receipt sufficient discharge to party owing judgment debtor.
Sec. 353. Judge may require person or officer of corporation to appear and answer as to indebtedness to judgment debtor.
Sec. 354. Witnesses required to testify in the same manner as on trial of an issue.
Sec. 355. Judge may order property applied on execution.
Sec. 356. Procedure where another party claims the property of judgment debtor.
Sec. 357. Punishment for disobedience of order.

Examination of judgment debtor

SEC. 350. When an execution against property of the judgment debtor, or any of several debtors in the same judgment, issued to the sheriff of the county where he resides, or, if he does not reside in this territory, to the sheriff of the county where the judgment roll is filed, is returned unsatisfied, in whole or in part, the judgment creditor, at any time after such return is made, shall be entitled to an order from the judge of the court, or probate judge, requiring such judgment debtor to appear and answer concerning his property, before such judge, or a referee appointed by him, at a time and place specified in the order; but no judgment debtor shall be required to attend before a judge or referee, out of the county in which he resides, when proceedings are taken under the provisions of this chapter.

Further proceedings against judgment debtor.

SEC. 351. After issuing an execution against property, and upon proof by affidavit by a party or otherwise, to the satisfaction of the court, or a judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by an order, require the judgment debtor to appear at a specified time and place, before such judge or referee appointed by him, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment as are provided upon the return of an execution. Instead of the order requiring the attendance of the judgment debtor, the judge may, upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the sheriff to arrest the debtor, and bring him before such judge. Upon being brought before the judge he may be ordered to enter into an undertaking with surety, that he will attend from time to time before the judge or referee, as shall be directed during the pendency of the proceedings, and until the final determination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking he may be committed to prison.

Party indebted to judgment debtor may pay sheriff

SEC. 352. After the issuing of an execution against property, and before its return, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the sheriff's receipt is a sufficient discharge for the amount so paid

Examination of persons indebted to judgment debtor.

SEC. 353. After the issuing or return of an execution against property of a judgment debtor, or any one of several debtors in the same judgment, and upon proof, by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars, the judge may by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place before him, or a referee appointed by him, and answer concerning the same.

The judge may also, by order, forbid a transfer or other disposition of the property of the judgment debtor not exempt from execution, and any interference therewith.

SEC. 354. Witnesses may be required to appear and testify before the judge or referee, upon any proceeding under this chapter, in the same manner as upon trial of an issue.

Witness

SEC. 355. The judge or referee may order any property of the judgment debtor not exempt from execution, in the hands of such debtor, or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment; except, that the earnings of the debtor for his personal services, at any time within thirty days next preceding the order, shall not be so applied, when it shall be made to appear by the debtor's affidavit or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor.

Money due judgment debtor applied to payment of judgment; exception

SEC. 356. If it appear that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him, or denies the debt, the court or judge may authorize, by an order made to that effect, the judgment creditor to institute an action against such person or corporation, for the recovery of such interest or debt. And the court or judge may, by order, forbid a transfer or other disposition of such interest or debt, until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the judge granting the same, or the court in which the action is brought, at any time, upon such terms as may be just.

Authority to sue person indebted to judgment debtor

SEC. 357. If any person, party or witness disobey an order of the referee properly made, in the proceeding before him, under this chapter, he may be punished by the court or judge ordering the reference, for a contempt.

Disobedience punished

TITLE X.

ACTIONS IN PARTICULAR CASES.

CHAPTER I.

ACTIONS FOR THE FORECLOSURE OF MORTGAGES.

Sec. 358. One action to foreclose mortgage, power of court, who made parties.
Sec. 359. Court to dispose of surplus moneys.
Sec. 360. How property sold when debt falls due in installments.

Action to foreclose mortgage.

SEC. 358. There shall be but one action for the recovery of any debt, or the enforcement of any rights, secured by mortgage upon real estate or personal property, which action shall be in accordance with the provisions of this chapter. In actions for the foreclosure of mortgages, the court shall have the power, by its judgment, to direct a sale of the incumbered property (or as much as may be necessary), and the application of the proceeds of the sale to the payment of the costs of the court, and expenses of the sale, and the amount due to the plaintiff; and if it appear from the sheriff's return that the proceeds are insufficient, and a balance still remains due, judgment shall be docketed for such balance against the defendant, or defendants, personally liable for the debt, and shall then become a lien on the real estate of such judgment debtor, as in other cases in which execution may be issued. No person holding a conveyance from or under the mortgagor, or of the property mortgaged, or having a lien thereon, which conveyance does not appear on record in the proper office at the time of the commencement of the action, need be made a party to such action; and the judgment therein rendered, and the proceedings therein had, shall be as conclusive against the party holding such unrecorded conveyance or lien, as if he had been made a party to said action, and shall, in all respects, have the same force and effect.

Sale of property.

Deficiency judgment.

Subsequent encumbrances.

Surplus money

SEC. 359. If there be surplus money remaining after payment of the amount due on the mortgage, lien, or incumbrance, with costs, the court may cause the same to be paid to the person entitled to it, and in the meantime may direct it to be deposited in court.

Proceedings in case debt not due.

SEC. 360. If the debt for which the mortgage, lien, or incumbrance is held be not all due, so soon as sufficient of the property has been sold to pay the amount due, with costs, the sale shall cease; and afterwards, as often as more becomes due for principal or interest, the court may, on motion, order more to be sold. But if the property cannot be sold in portions without injury to the parties the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

CHAPTER II.

ACTIONS FOR NUISANCE, WASTE AND WILFUL TRESPASS IN CERTAIN CASES.

Sec. 361. Nuisance defined; who may bring action; nuisance may be enjoined.

Sec. 362. Waste defined; action for.
Sec. 363. Cutting or carrying away timber.
Sec. 364. Measure of damages under last section.
Sec. 365. Damages in forcible entry and detainer.

Nuisance defined; action.

SEC. 361. Anything which is injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action. Such action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

Action for waste

SEC. 362. If a guardian, tenant for life or years, joint tenant, or tenant in common of real property, commit waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for triple damages.

Treble damages for injury to trees, etc

SEC. 363. Any person who shall cut down or carry off any wood or underwood, tree or timber, or girdle or otherwise injure any tree or timber on the land of another person, or on the street or highway in front of any person's house, village or city lot, or cultivated grounds, or on the common or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, shall be liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor in a civil action in any court having jurisdiction.

Damages in certain cases.

SEC. 364. Nothing in the last section shall authorize the recovery of more than the just value of the timber taken from uncultivated woodland for the repair of the public highway or bridge upon the land or adjoining it.

Damages in unlawful entry and forcible detainer.

SEC. 365. If a person recover damages for a forcible or unlawful entry in or upon, or detention of any building or any cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

CHAPTER III.

ACTIONS CONCERNING REAL ESTATE.

Sec. 366. Who may bring action to determine an interest in real estate.

Sec. 367. Plaintiff shall not recover costs if defendant disclaims.
Sec. 368. Judgment when plaintiff's title terminates during suit.
Sec. 369. When value of improvements allowed as set off; Order to allow survey of real estate.
Sec. 370. Order for survey.
Sec. 371. Mortgagee cannot recover possesssion of real estate, without foreclosure and sale.
Sec. 372. Injury to real estate may be enjoined during foreclosure.
Sec. 373. Purchaser may recover damages for injury.
Sec. 374. Plaintiff cannot be prejudiced by alienation by defendant.
Sec. 375. Customs and usages of miners.

Parties in action concerning real estate.

SEC. 366. An action may be brought by any person in possession, by himself or his tenant, of real property, against any person who claims an estate or interest therein adverse to him, for the purpose of determining such adverse claim, estate, or interest.

Act of Mar. 10, 1887
Costs if defendant disclaims.

SEC. 367. If the defendant in such action disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff shall not recover costs. But in actions which the plaintiff has brought under section 2326 of the revised statutes of the United States to determine an adverse claim, the plaintiff shall recover costs if the defendant does not relinquish in the proper United States land office or disclaim in writing any interest or estate in the property within twenty days from the filing of said adverse claim in such land office.

NOTE.—Second subdivision of section 367 is from act of March 10, 1887.

Judgment where plaintiff's right terminates during pendency of action.

SEC. 368. In an action for the recovery of real property where the plaintiff shows the right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment shall be according to the fact, and the plaintiff may recover damages for withholding the property.

Improvements, set-off against damages.

SEC. 369. When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under cover of title adversely to the claims of the plaintiff, in good faith, the value of such improvements shall be allowed as a set-off against such damages.

Right of entry for survey, etc

The court in which an action is pending for the recovery of real property or for damages for an injury thereto, or a judge thereof, or a county judge, may, on motion, upon notice by either party, for good cause shown, grant an order allowing to such party the right to enter upon the property and make survey and measurement thereof, and of any tunnels, shafts, or drifts thereon, for the purpose of the action, even though entry for such purpose has to be made through other lands belonging to parties to the action.

Order for entry and service thereof

SEC. 370. The order shall describe the property, and a copy thereof shall be served on the owner or occupant; and thereupon such party may enter upon the property, with necessary surveyors and assistants, and may make such survey and measurement; but if any unnecessary injury be done to the property he shall be liable therefor.

No possession by mortgagee without sale.

SEC. 371. A mortgage of real property shall not be deemed a conveyance, whatever its term, so as to enable the owner of the mortgage to recover possession of the real property without foreclosure and sale.

Waste, may be restrained

SEC. 372. The court may, by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon, or after a sale on execution, before a conveyance.

Damages for waste

SEC. 373. When real property shall have been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession, after a sale and before possession is delivered under the conveyance.

Action not prejudiced by alienation.

SEC. 374. An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by such person, either before or after the commencement of the action.

Mining customs.

SEC. 375. In actions respecting mining claims, proof must be admitted of the customs, usages, or regulations established and in force at the bar or diggings embracing such claim; and such customs, usages, or regulations, when not in conflict with the laws of this territory, must govern the decision of the action.

12th ses. p 10
Examination of mining property.

SEC. 376. Whenever any person shall have any right to or interest in any lead, lode, or mining claim which is in the possession of another person, and it shall be necessary for the ascertainment, enforcement, or protection of such right or interest that an inspection, examination or survey of such mine, lode, or mining claim should be had or made; or whenever any inspection, examination, or survey of any such lode or mining claim shall be necessary to protect, ascertain, or enforce the right or interest of any person in another mine, lead, lode, or mining claim, and the person in possession of the same shall refuse, for a period of three days after demand therefor in writing, to allow such inspection, examination, or survey to be had or made, the party so desiring the same may present to the district court, or a judge thereof, of the county wherein the mine, lead, lode, or mining claim is situated, a petition, under oath, setting out his interest in the premises, describing the same, that the premises are in the possession of a party, naming him, the reason why such examination, inspection, or survey is necessary, the demand made on the person in possession so to permit such examination, inspection, or survey, and his refusal so to do. The court or judge shall thereupon appoint a time and place for hearing such petition, and shall order notice thereof to be served upon the adverse party, which notice shall be served at least one day before the day of hearing. On the hearing, either party may read affidavits, and if the court or judge is satisfied that the facts stated in the petition are true, he shall make an order for an inspection, examination, or survey of the lode or mining claim in question, in such manner, at such time, and by such persons as are mentioned in the order. Such persons shall thereupon have free access to such mine, lead, lode, or mining claim for the purpose of making such inspection, examination, or survey, and any interference with such persons while acting under such order shall be contempt of court. If the order of the court is made while an action is pending between the parties to the order, the costs of obtaining the order shall abide the result of the action, but all costs of making such examination or survey shall be paid by the petitioner.

NOTE.—Sec. 376 is from act of Feb. 23d, 1881.

CHAPTER IV.

ACTIONS FOR THE PARTITION OF REAL PROPERTY.

Sec. 377. Who may bring action for partition.

Sec. 378. What must be set forth in the complaint.

Sec. 379. No person made a party unless claim appear of record.

Sec. 380. Notice of lis pendens.

Sec. 381. To whom summons directed.

Sec. 382. Absent and unknown parties served by publication.

Sec. 383. Contents of the answer of defendant.

Sec. 384. Rights of parties determined and Court to be satisfied as to title before judgment.

Sec. 385. When Court may cause partition to be made only between original co-tenants.

Sec. 386. Upon ascertaining that persons not parties to the action have liens or claims of record, the Court to direct an amendment, supplemental complaint or appoint a referee.

Sec. 387. Notice for lien-holders to appear.

Sec. 388. Court may order sale or partition.

Sec. 389. Duties of referees in making partition.

Sec. 390. Report of referees.

Sec. 391. Action upon report of referees; on whom final judgment binding; copy may be recorded.

Sec. 392. Tenant for years less than ten not affected.

Sec. 393. Expenses apportioned.

Sec. 394. Lien on undivided interest.

Sec. 395. Estate for life or years set off.

Sec. 396. How proceeds of sale of encumbered property applied.

Sec. 397. Procedure when a lien-holder has other securities.

Sec. 398. Disposition of proceeds of sale.

Sec. 399. Further proceedings when proceeds of sale paid into court.

Sec. 400. Notice and sales under this chapter.

Sec. 401. Court to direct terms of credit in order of sale.

Sec. 402. In whose names referees to take security.

Sec. 403. Tenant for life or years may receive money for his interest.

Sec. 404. Court may fix value without consent.

Sec. 405. Rights of person unknown to be protected by Court.
Sec. 406. Contingent Interests and vested rights to be settled.
Sec. 407. Terms of sale made known; distinct parcels sold separately.
Sec. 408. Referees and guardians not to purchase: when sales void.
Sec. 409. Report of referees after sale.

Action for partition.

SEC. 377. When several co-tenants hold and are in possession of real property as parceners, joint tenants, or tenants in common, in which one or more of them have an estate of inheritance, or for life or lives, or for years, an action may be brought by one or more of such persons for a partition thereof, according to the respective rights of the persons interested therein, and for a sale of such property or a part thereof, if it appear that a partition cannot be made without great prejudice to the owners.

All interests shall be set forth in complaint.

SEC. 378. The interest of all such persons in the property, whether such persons be known or unknown, shall be set forth in the complaint specifically and particularly, as far as known to the plaintiff, and if one or more of the parties, or the share or quantity of interest, be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact shall be set forth in the complaint.

Who need not be made a party.

SEC. 379. No person having a conveyance of, or claiming a lien on, the property, or some part of it, need be made a party to the action, unless such conveyance or lien appear of record.

Lis pendens.

SEC. 380. Immediately after filing the complaint in the district court, the plaintiff shall file with the recorder of the county, or of the several counties, in which the property is situated, either a copy of such complaint or a notice of the pendency of the action, containing the names of the parties so far as known, the object of the action, and a description of the property to be affected thereby. From the time of the filing it shall be deemed notice to all persons.

Summons.

SEC. 381. The summons shall be directed to all the joint tenants and tenants in common, and all persons having an interest in, or any liens of record by mortgage, judgment, or otherwise, upon the property, or upon any particular portion thereof; and, generally, to all persons unknown who have or claim any interest in the property.

SEC. 382. If a party having a share or interest is unknown, or any one of the known parties reside out of the territory, or cannot be found therein, and such fact is made to appear by affidavit, the summons may be served on such absent or unknown party by publication, as in other cases. When publication is made, the summons, as published, shall be accompanied by a brief description of the property which is the subject of the action.

Service of summons on absent party.

SEC. 383. The defendants who have been personally served with the summons and a copy of the complaint, or who shall have appeared without such service, shall set forth in their answers, fully and particularly, the origin, nature, and extent of their respective interests in the property; and if such defendants claim a lien on the property by mortgage, judgment, or otherwise, they shall correctly state the original amount and date of the same, and the true sum remaining due thereon; also, whether the same has been secured in any other way or not, and if secured, the nature and extent of such security, or they shall be deemed to have waived their right to such lien.

Answer.

SEC. 384. The rights of the several parties, plaintiffs as well as defendants, may be put in issue, tried and determined by such action; and when a sale of the premises is necessary the title shall be ascertained by proof to the satisfaction of the court, before the judgment of sale shall be made, and where service of the complaint has been made by publication, like proof shall be required of the right of absent or unknown parties before such judgment is rendered, except that where there are several unknown persons having an interest in the property their rights may be considered together in the action, and not as between themselves.

All rights to be tried

SEC. 385. Whenever from any cause it shall become, in the opinion of the court, impracticable or highly inconvenient to make a complete partition in the first instance, among all the parties in interest, it shall be lawful for the court to first ascertain and determine the shares or interest respectively held by the original co-tenants, and thereupon to adjudge and cause a partition to be made, as if such original cotenants were the parties and sole parties in interest, and the only parties to the action, and therefore proceed in like manner to adjudge and make partition separately of each share or partition so ascertained and allotted, as between those claiming under the orig-

Proceedings if complete partition inconvenient in first instance.

inal tenant to whom the same shall have been so set apart, or allow them to remain tenants in common thereof, as they may desire.

Proceedings as to outstanding claims.

SEC. 386. If it shall appear to the court by the certificate of the county recorder, or county clerk, or by the sworn or verified statement of any person who may have examined or searched the records, that there are outstanding liens or incumbrances of record upon such real property, or any part or portion therof, which issued and were of record at the time of commencement of said action, and the persons holding such liens are not made parties to the action, the court shall either order such persons to be made parties to the action by an amendment or supplemental complaint, or appoint a referee to ascertain whether or not such liens or incumbrances have been paid, or if not paid, what amount remains due thereon, and their order among the liens or incumbrances severally held by the said persons and the parties to the said action, and whether the amount remaining due thereon has been secured in any manner, and if secured, the nature and extent of the security.

Notice to owners of outstanding claims, report of referee.

SEC. 387. The plaintiff shall cause a notice to be served a reasonable time previous to the day for appearance before the referee appointed, as provided in the last section, on each person having outstanding liens of record who is not a party to the action, to appear before the referee at a specified time and place, to make proof by his own affidavit or otherwise of the true amount due, or to become due, contingently or absolutely thereon. In case such person be absent or his residence be unknown, service may be made by publication, or notice to his agents, under the direction of the court, in such manner as may be proper. The report of the referee thereon shall be made to the court, and shall be confirmed, modified, or set aside, and a new reference ordered, as the justice of case may require.

Partition or sale.

SEC. 388. If it be alleged in the complaint, and be established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property, or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof; otherwise, upon the requisite proof being made, it shall order a partition according to the respective rights of the parties as ascertained by the court, and appoint three referees therefor, and shall designate the portion to remain undivided for the owners whose interests are remaining unknown, or not ascertained.

Duty of referees.

SEC. 389. In making the partion, the referees shall divide the property and allot the several portions thereof to the respective parties, quantity and quality relatively considered, according to the respective rights of the parties as determined by the court, pursuant to the provisions of this chapter, designating the several portions by proper landmarks, and may employ a surveyor, with the necessary assistants, to aid them.

Report of referees

SEC. 390. The referees shall make a report of their proceedings, specifying therein the manner of executing their trusts, describing the property divided and the shares allotted to each party, with a particular description of each share.

Confirmation and effect of report

SEC. 391. If no exceptions be filed to the report, or upon hearing they should be overruled, the court shall confirm the same; or it may, upon exceptions, change, modify, or set it aside, and refer the matter to the same, or, if necessary, may appoint new referees. Upon the report as confirmed, a final judgment shall be rendered, to the effect that such partition be effectual and valid forever, which judgment shall be binding and conclusive:

First. On all persons named in the complaint as parties to the action, or who shall have appeared therein, and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee, or as tenants for life or for years, or as entitled to the reversion, remainder, or the inheritance of such property, or any part thereof, after the termination of a particular state therein, and who, by any contingency, may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof as tenants for years or for life.

Second. On all persons interested in the property, who may be unknown, to whom notice shall have been given of the action by publication.

Third. On all persons claiming from such parties or persons, or either of them, and to that end the action shall be deemed, and is hereby declared, to be a proceeding *in rem.*

A copy of the report of the referee, as confirmed, together with a copy of the final judgment therein rendered, duly certified, may be filed in the office of the county recorder of the county or counties in which the land is situated, whose duty it shall be to record the same, which filing and recording shall have the same force and effect as the filing and recording of a deed of conveyance.

Fourth. On all persons who have, or claim to have, conveyances to, or liens upon, or any interest in, the property, when such conveyances, liens, or interest did not appear of record at the time of the commencement of the proceedings for partition.

Tenants not affected.

SEC. 392. But such judgment and partition shall not affect tenants for years, less than ten, to the whole of the property which is the subject of the partition.

Costs

SEC. 393. The expenses of the referees, including those of a surveyor and his assistant or assistants, when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by the court, in its discretion, to the referees, shall be apportioned among the different parties to the action equitably.

Lien on undivided interest

SEC. 394. When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall thenceforth be a charge only on the share assigned to such party; but such share shall be first charged with its just proportion of the costs of the partition in preference to such lien.

Estate for life or years.

SEC. 395. When a part of the property only is ordered to be sold, if there be an estate for life or for years in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

Proceeds.

SEC. 396. The proceeds of the sale of the incumbered property shall be applied, under the direction of the court, as follows:

First. To pay its just proportion of the general costs of the action.

Second. To pay the costs of the reference.

Third. To satisfy and cancel of record the several liens in their order of priority, by payment of the sums due and to become due; the amount due to be verified by affidavit at the time of payment.

Fourth. The residue among the owners of the property sold, according to the respective shares therein.

Lien upon other property to be first exhausted.

SEC. 397. Whenever any party to an action who holds a lien upon the property, or any part thereof, has other securities for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof.

Distribution of proceeds.

SEC. 398. The proceeds of sale and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto whenever the court so directs; but in case no direction be given, all such proceeds and securities shall be paid into court or deposited therein, or as directed by the court.

Continuance.

SEC. 399. When the proceeds of sales of any shares or parcels belonging to persons who are parties to the action, and who are known, are paid into court, the action may be continued as between such parties for the determination of their respective claims thereto, which shall be ascertained and adjudged by the court. Further testimony may be taken in court or by a referee, at the discretion of the court; and the court may, if necessary, require such parties to present the facts or law in controversy by pleadings as in an original action.

Sales to be at public auction; notice

SEC. 400. All sales of real property made by referees under this chapter shall be made by public auction to the highest bidder, upon notice in the manner required for the sale of real property on execution. The notice shall state the terms of sale; and if the property, or any part of it, is to be sold subject to a prior estate, charge, or lien, that shall be stated in the notice.

Terms of credit, investment

SEC. 401. The court shall, in the order for sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit, and for that portion of which the purchase money is required, by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants, or parties out of the territory.

Separate mortgages may be taken.

SEC. 402. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money of such parts of the property as are directed by the court to be sold on credit for the shares of any known owner of full age, in the name of such owner; and for the shares of an infant in the name of the guardian of such infant; and for other shares in the name of the clerk of the county and his successors in office.

Satisfaction to consenting tenant

SEC. 403. The person entitled to a tenancy for life or years, whose estate shall have been sold, shall be entitled to receive such sum as may be deemed a reasonable satisfaction for such estate, and which the person so entitled may consent to accept instead thereof by an instrument in writing, filed with the clerk of the court. Upon the filing of such consent the clerk shall enter the same in the minutes of the court.

Proceeding where tenant does not consent

SEC. 404. If such consent be not given, filed and entered, as provided in the last section, at or before a judgment of sale is rendered, the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of such estate, and shall order the same to be paid to such party or deposited in court for him, as the case may require.

Interest of unknown parties to be protected.

SEC. 405. If the persons entitled to such estate for life or years be unknown, the court shall provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

Vested or contingent future right

SEC. 406. In all cases of sales, when it appears that any person has a vested or contingent future right or estate in any of the property sold, the court shall ascertain and settle the proportional value of such contingent or vested right or estate, and shall direct such proportion of the proceeds of the sale to be invested, secured or paid over, in such manner as to protect the rights and interests of parties.

Terms and manner of sale.

SEC. 407. In all cases of sales of property the terms shall be made known at the time; and if the premises consist of distinct farms or lots they shall be sold separately.

Referees and guardians not to be the purchasers.

SEC. 408. Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase; nor shall a guardian of an infant party be interested in the purchase of any real property, being the subject of the actions, except for the benefit of the infant. All sales contrary to the provisions of this section, shall be void.

Report.

SEC. 409. After completing the sale of the property, or any part thereof, ordered to be sold, the referee shall report the same to the court, with a description of the different parcels of land sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and condition of the sale, and the securities, if any, taken. The report shall be filed in the office of the clerk of the county where the property is situated.

CHAPTER V.

ACTIONS FOR THE USURPATION OF AN OFFICE OR FRANCHISE.

Sec. 410. Remedies by civil action instead of by writs of "scire facias" and "quo warranto."
Sec. 411. Who may bring action for usurping office or franchise.
Sec. 412. What complaint to set forth; when defendant arrested.
Sec. 413. What judgment may determine.
Sec. 414. To what person is entitled when judgment is rendered upon his right.
Sec. 415. Damages may be recovered.
Sec. 416. Rights of several persons may be settled in one action.
Sec. 417. Judgment against person found guilty.

Writs abolished

SEC. 410. The writ of *scire facias*, the writ of *quo warranto*, and proceedings by information in the nature of *quo warranto*, are abolished. The remedies obtainable in these forms may hereafter be obtained by civil actions under the provisions of this chapter.

Action for usurpation of office

SEC. 411. An action may be brought by the district attorney in the name of the people of this territory, upon his own information, or upon the complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise within his district in the territory; and it shall be the duty of the district attorney to bring the action whenever he has reason to believe that any such office or franchise has been usurped, intruded into, or unlawfully held or exercised by any person, or when he is directed to do so by the governor; and in case such district attorney shall neglect or refuse to bring such action upon the complaint of a private party, such action may be brought by such private party upon his own relation, in the name of the people of the territory.

Arrest of defendant.

SEC. 412. Whenever such action is brought, the district attorney or relator, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightly entitled to the office, with a statement of his rights thereto; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of his usurpation thereof, an order may be granted by a judge of the supreme court, or a district judge, for the arrest of such defendant and holding him to bail; and thereupon he may be arrested and held to bail, in the same manner, and with the same effect, and subject to the same rights and liabilities, as in other civil actions where the defendant is subject to arrest.

Judgment.

SEC. 413. In every such case judgment may be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled, or only upon the right of the defendant, as justice shall require.

Party entitled may take office.

SEC. 414. If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office, and executing such official bond as may be required by law, to take upon himself the execution of the office.

Right of action of party obtaining judgment.

SEC. 415. If judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he may recover, by action, the damages which he shall have sustained by reason of the usurpation of the office by the defendant.

All rights tried in one action.

SEC. 416. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons in order to try their respective rights to such office or franchise.

Usurper excluded from office; penalty.

SEC. 417. When a defendant, against whom such action has been brought, is adjudged guilty of usurping, or intruding into, or unlawfully holding any office, franchise, or privilege, judgment should be rendered that such defendant be excluded from the office, franchise, or privilege, and that he pay the costs of the action. The court may also, in its discretion, impose upon the defendant a fine, not exceeding five thousand dollars, which fine, when collected, shall be paid into the treasury of the territory.

TITLE XI.

OF APPEALS IN CIVIL ACTIONS.

CHAPTER I.

APPEALS IN GENERAL.

Sec. 418. Judgment or order may be reviewed.
Sec. 419. Order without notice may be modified without notice.
Sec. 420. Party may appeal. Names of parties.

Sec. 421. Cases in which appeals may be taken.
Sec. 422. How an appeal is taken.
Sec. 423. Undertaking on appeal.
Sec. 424. Undertaking to stay execution.
Sec. 425. When judgment directs assignment or delivery of documents or chattels, how execution stayed.
Sec. 426. When judgment directs the execution of a conveyance, etc., how stayed.
Sec. 427. How stayed when judgment is for sale of real property.
Sec. 428. Effect of appeal when perfected; when in force on an attachment.
Sec. 429. Undertaking may be in one or several instruments.
Sec. 430. Justification of sureties and exception to their sufficiency: deposit equivalent to undertaking.
Sec. 431. In other cases proceedings stayed: exceptions.
Sec. 432. Statement on appeal and amendments thereto: how settled.
Sec. 433. When statement or right to amend deemed waived or amendments agreed to.
Sec. 434. For good cause time may be enlarged.
Sec. 435. How statement authenticated.
Sec. 436. Copy of statement annexed to transcript.
Sec. 437. Provisions of last five sections not applicable to appeals from an order on affidavit filed.
Sec. 438. What transcript to contain: when appeal dismissed.
Sec. 439. Effect of dismissal of an appeal.
Sec. 440. What court may review on appeal from a judgment.
Sec. 441. Powers of appellate court to reverse, affirm, or modify, and effect of same.
Sec. 442. Hearing of appeal: points and authorities.
Sec. 443. Remittitur and duties of clerk of lower court.

Judgment or order may be reviewed

SEC. 418. A judgment or order in a civil action, except when expressly made final by this act, may be reviewed as prescribed by this act.

As to orders made out of court without notice

SEC. 419. An order made out of court, without notice to the adverse party, may be vacated or modified without notice, by the judge who made it, or may be vacated or modified on notice, in the manner in which other motions are made.

Parties to appeal.

SEC. 420. Any party aggrieved may appeal in the cases prescribed in this title. The party appealing shall be known as the appellant, and the adverse party as the respondent.

Cases in which appeal may be taken.

SEC. 421. An appeal may be taken:

First. From a final judgment in an action or special proceeding commenced in the court in which the same is rendered, within one year after the entry of judgment. But an exception to the decision or verdict on the ground that it is not supported by the evidence, cannot be reviewed on an appeal from the judgment unless the appeal is taken within sixty days after the rendition of the judgment.

Second. From a judgment rendered on an appeal from an inferior court, within ninety days after the entry of such judgment.

Third. From an order granting or refusing a new trial; from an order granting or dissolving an injunction; from an order to grant or dissolve an injunction, from an order dissolving or refusing to dissolve an attachment; from an order granting or refusing to grant a change of the place of trial; from any special order made after final judgment, and from an interlocutory judgment in actions for partition of real property, within sixty days after the order or interlocutory judgment is made and entered in the minutes of the court or filed with the clerk.

Filing and serving notice.

SEC. 422. An appeal is taken by filing with the clerk of the court in which the judgment or order appealed from is entered, a notice stating the appeal from the same, or some specific part thereof, and serving a similar notice on the adverse party, or his attorney. The order of service is immaterial, but the appeal is ineffectual for any purpose unless, within five days after service of the notice of appeal, an undertaking be filed, or a deposit of money be made with the clerk, as hereinafter provided, or the undertaking be waived by the adverse party in writing.

Undertaking

SEC. 423. The undertaking on appeal must be in writing, and must be executed on the part of the appellant, by at least two sureties, to the effect that the appellant will pay all damages and costs which may be awarded, against him on the appeal, or on a dismissal thereof, not exceeding three hundred dollars, or that sum must be deposited with the clerk with whom the judgment or order was entered, to abide the event of the appeal.

Stay in case of money judgment

SEC. 424. If the appeal be from a judgment or order directing the payment of money, it does not stay the execution of the judgment or order, unless a written undertaking be executed on the part of the appellant, by two or more sureties, to the effect that they are bound in double the amount named in the judgment or order; that if the judgment or order appealed from, or any part thereof, be affirmed; or the appeal be dismissed, the appellant will pay the amount directed to be paid by the judgment or order, or the part of such amount as to which the judgment or order is affirmed, if affirmed only in part, and all damages and costs which may be awarded against the appellant upon the appeal.

Stay in case of judgment for assignment or delivery of personal property.

SEC. 425. If the judgment or order appealed from direct the assignment or delivery of documents or personal property, the execution of the judgment or order shall not be stayed by appeal, unless the things required to be assigned or delivered be placed in the custody of such officer or receiver as the court may appoint; or unless an undertaking be entered into on the part of the appellant, with at least two sureties, and in such amount as the court, or the judge thereof, may direct, to the effect that the appellant will obey the order of the appellate court upon the appeal.

Stay in case of judgment directing conveyance

SEC. 426. If the judgment or order appealed from direct the execution of a conveyance or other instrument, the execution of the judgment or order shall not be stayed by the appeal until the instrument is executed and deposited with the clerk with whom the judgment or order is entered, to abide the judgment of the appellate court.

Stay in case of judgment directing sale or delivery of possession of real property.

SEC. 427. If the judgment or order appealed from direct the sale or delivery of possession of real property, the execution of the same cannot be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon, and if the judgment be affirmed, or the appeal dismissed, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of the possession thereof, pursuant to the judgment or order, not exceeding a sum to be fixed by the judge of the court by which the judgment was rendered or order made, and which must be specified in the undertaking. When the judgment is for the sale of mortgaged premises, and the payment of a deficiency arising from the sale, the undertaking must also provide for the payment of such deficiency.

Effect of appeal.

SEC. 428. Whenever an appeal is perfected as provided in the preceding sections of this chapter, it stays all further proceedings in the court below upon the judgment or order appealed from, or upon the matters embraced therein, and releases from levy property which has been levied upon under execution issued upon such judgment; but the court below may proceed upon any other matter embraced in the action, and not affected by the order appealed from: and the court below may, in its discretion, dispense with or limit the security required by this chapter, when the appellant is an executor, administrator, trustee, or other person acting in another's right. An appeal does not continue in force on an attachment unless an undertaking be executed and filed on the part of the appellant, by at least two securities, in double the amount of the debt claimed by him, that the appellant will pay all costs and damages which the respondent may sustain by reason of the attachment, in case the order of the court below be sussained, and unless within five days after the entry of the order appealed from such appeal be perfected.

One or more undertakings.

SEC. 429. The undertaking prescribed by sections 424, 425, 426, and 427, may be in one instrument or several, at the option of the appellant.

Affidavits of sureties.

SEC. 430. An undertaking upon appeal shall be of no effect unless it be accompanied by the affidavits of the sureties that they are each worth the amount specified therein, over and above all their just debts and liabilities, exclusive of property exempt from execution, except where the judgment exceeds three thousand dollars, and the undertaking is executed by more than two sureties, they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties.

Exception to sureties.

The adverse party, however, may except to the sufficiency of the sureties to the undertaking or undertakings mentioned in sections 424, 425, 426, and 427, at any time within thirty days after the filing of such undertaking; and unless they, or other sureties, within twenty days after the appellant, or appellants, shall have been served with notice of such exception, justify before a judge of the court below, a probate judge, or county clerk, upon five days' notice to the appellant, execution of the judgment or decree appealed from shall be no longer stayed; and in all cases where an undertaking is required on appeal, by the provisions of this act, a deposit in the court below of the amount of the judgment appealed from, and three hundred dollars in addition, shall be equivalent to filing the undertaking; and in all cases the undertaking or deposit may be waived by the written consent of the respondent.

Stay in other cases.

SEC. 431. In cases not provided for in sections 423, 424, 425, and 426, the perfecting of an appeal by giving the undertaking, or making the deposit, mentioned in section 423, stays proceedings in the court below upon the judgment or order appealed from, except where it directs the sale of perishable property, in which case the court below may order the property to be sold, and the proceeds thereof to be deposited, to abide the judgment of the appellate court; and except, also, where it adjudges the defendant guilty of usurping, or intruding into, or unlawfully holding public office, civil or military, within this territory; and except, also, where the order grants, or refuses to grant, a change of the place of trial of an action.

Statement and amendments.

SEC. 432. When the party who has a right to appeal wishes a statement of the case to be annexed to the record of the judgment or order, he shall, within twenty days after the entry of such judgment or order, prepare such statement, which shall state specifically the particular errors or grounds upon which he intends to rely on the appeal, and shall contain so much of the evidence as may be necessary to explain the particular errors or grounds specified, and file the same with the clerk of the court, and give notice to the opposite party, or his attorney, of such filing. The respondent may, within five days thereafter, prepare amendments to such statement, and file the same, and serve notice thereof on the opposite party. The statement and amendments which may be filed shall be presented to the judge, or court, upon notice of two days to the opposite party, and a true statement shall thereupon be settled by the judge, or court. If no amendments are filed, the statement may be presented to the judge, or court, without any notice to the respondent.

Waiver of statement and amendments

SEC. 433. If the party shall omit to make a statement within the time above limited, he shall be deemed to have waived his right thereto; and when a statement is made, and the parties shall omit, within the several times above limited, the one party to propose

—12

amendments, the other to notify an appearance before the judge, they shall respectively be deemed, the former to have agreed to the statement as prepared, and the latter to have agreed to the amendments as proposed; but the judge who heard the cause shall, notwithstanding such omission, or implied agreement, have power to correct any misstatement of facts, or of his rulings, which such statement may contain.

Extension of time.

SEC. 434. The several periods of time above limited may be enlarged, upon good cause shown, by the judge before whom the cause was tried.

Settlement of statement.

SEC. 435. The statement, when settled by the judge, shall be signed by him, with his certificate that the same has been allowed, and is correct; when the statement is agreed upon by the parties, they, or their attorneys shall sign the same, with their certificate that it has been agreed upon by them, and is correct. In either case, when settled or agreed upon, it shall be filed with the clerk.

Copy of statement to be annexed to transcript.

SEC. 436. A copy of the statement shall be annexed to a copy of so much of the judgment roll as shall be included in the transcript on appeal, if the appeal be from the judgment; if the appeal be from an order, to a copy of such order.

Affidavit may take place of statement

SEC. 437. The provisions of the last five preceding sections shall not apply to appeals taken from an order made upon affidavit filed; but such affidavit shall be annexed to the order, in the place of the statement mentioned in those sections.

Transcript.

SEC. 438. On an appeal from a final judgment, the appellant shall furnish the court with a transcript of the notice of appeal, undertaking or undertakings on appeal, the pleadings, or amended pleadings, as the case may be, which form the issues tried in the case, the judgment, and such other parts of the judgment roll, and no more, as are necessary to present or explain the points relied on, and the statement, if there be one, certified by the attorneys of the parties to the appeal, or by the clerk, to be correct. On appeal from a judgment rendered on an appeal, or from an order, the appellant shall furnish the court with a copy of the notice of appeal, undertaking or undertakings on appeal, the judgment or order appealed from, and a copy of the papers used on the hearing in the court below, such copies to be certified in like manner to be correct. If any written opinion be placed on file, in rendering the judgment or making the order in the court below, a copy shall be furnished. If the appellant fail to furnish the requisite papers, the appeal may be dismissed.

Effect of dismissal.

SEC. 439. The dismissal of an appeal is in effect an affirmation of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal.

What may be reviewed on appeal.

SEC. 440. Upon an appeal from a judgment, the court may review the verdict or decision, and any intermediate order or decision excepted to, which involves the merits, or necessarily affects the judgment, except a decision or order from which an appeal might have been taken.

Power of appellate court over judgment appealed from

SEC. 441. Upon an appeal from a judgment or order, the appellate court may reverse, affirm, or modify the judgment or order appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties; and may set aside or confirm, or modify any or all of the proceedings subsequent to, or dependent upon, such judgment or order, and may, if necessary or proper, order a new trial. When the judgment or order is reversed or modified, the appellate court may make complete restitution of all property and rights lost by the erroneous judgment or order, so far as such restitution is consistent with protection of a purchaser of property at a sale ordered by the judgment, or had under process issued upon the judgment on the appeal from which the proceedings were not stayed; and for relief in such cases the appellant may have his action against the respondent, enforcing the judgment for the proceeds of the sale of the property, after deducting therefrom the expenses of the sale.

Hearing the appeal.

SEC. 442. Appeals in the supreme court may be brought to a hearing by either party, upon notice of three days to the opposite parties. Before the argument each party shall furnish to the other, and each of the justices, a copy of his points and authorities; or either party may file one copy thereof with the clerk, who shall cause the requisite copies to be made.

Remittitur.

SEC. 443. When judgment is rendered upon appeal, it shall be certified by the clerk of the supreme court, to the clerk with whom the judgment roll is filed, or the order appealed from is entered. In cases of appeal from the judgment, the clerk with whom the roll is filed shall attach the certificate to the judgment roll, and enter a minute of the judgment of the supreme court on the docket against the original entry. In cases of appeal from an order, the clerk shall enter at length, in the records of the court, the certificate received, and minute against the entry of the order appealed from reference to the certificate, with a brief statement that such order has been affirmed, reversed, or modified, as the case may be, by the supreme court on appeal.

CHAPTER II.

APPEALS TO THE SUPREME COURT FROM THE DISTRICT COURTS.

Sec. 444. An appeal may be taken to the supreme court:
First. From a final judgment.
Second. From an order granting or refusing a new trial, &c.

Appeal to supreme court.

SEC. 444. An appeal may be taken to the supreme court from the district courts in the following cases:

First. From a final judgment, or any part thereof, entered in an action or special proceeding commenced in those courts, or brought into those courts from other courts.

Second. From an order granting or refusing a new trial; from an order granting or dissolving an injunction; from an order refusing to grant or dissolve an injunction; from an order dissolving or refusing to dissolve an attachment; from an order changing or refusing to change the place of trial; from any special order made after final judgment; and from such interlocutory judgment in actions for partitions as determines the rights and interests of the respective parties, and directs partition to be made.

CHAPTER III.

APPEALS FROM PROBATE TO DISTRICT COURTS.

Sec. 445. Cases in which appeals taken from probate to district courts.
Sec. 446. Time in which appeal taken.
Sec. 447. Appeal brought to a hearing without delay.
Sec. 448. Other cases of appeal—names of parties to appeal.
Sec. 449. When appeal under last section to be perfected.
Sec. 450. Notice of appeal.
Sec. 451. Undertaking an appeal.
Sec. 452. Undertaking for costs.
Sec. 453. Justification of sureties under last two sections.
Sec. 454. Transcript on appeal.
Sec. 455. Stay of proceedings in court below.
Sec. 456. When appellant not to recover costs.
Sec. 457. Case on appeal tried "de novo."
Sec. 458. Sheriff to execute process.

Appeal to district court.

SEC. 445. An appeal may be taken from a probate court to the district court of the district in which the probate court is held, in the following cases:

First. From an order or decree admitting a will to probate or refusing the same.

Second. From an order setting apart property or making an allowance for the widow or children.

Third. From an order granting letters testamentary or of administration, or appointing a guardian of an infant or of an insane person, or of a person incompetent to manage his property. or refusing to grant such letters or to make such appointment, or making such letters of appointment.

Fourth. From an order directing the sale or conveyance of real property.

Fifth. From an order or decree by which a debt, claim, legacy, or distributive share is allowed, or payment thereof directed, or by which such allowance or direction is refused.

Sixth. From an order made on the settlement of an executor, administrator, or guardian.

Time for appeal

SEC. 446. The appeal shall be taken within thirty days after the order or decree appealed from is entered with the clerk.

Time or taking appeals

SEC. 447. Appeals from the probate court shall be brought to a hearing at the earliest period practicable. For the failure to prosecute an appeal or unnecessary delay in bringing it to a hearing, the district court may order the appeal to be dismissed.

Appeal in civil action

SEC. 448. In cases other than those provided for in section four hundred and forty-five, any party feeling aggrieved by the judgment of the probate court in any civil action may appeal therefrom to the district court for the county in which said probate court is held, or to which it may be attached for judicial purposes. The party appealing shall be known as the appellant, and the adverse party as the respondent.

Time for appeal, trial de novo.

SEC. 449. All appeals taken by virtue of the provisions of the last section shall be perfected within thirty days from the rendition of the judgment appealed from, and shall be tried *de novo*, in said district court.

Notice

SEC. 450. The appeal shall be taken by filing with the clerk of the court in which the judgment appealed from is entered, or with the judge of said court, if there be no clerk, a notice stating the appeal from the same, and serving a copy of such notice upon the adverse party or his attorney.

Undertaking

SEC. 451. The party appealing shall file with the judge or clerk of said court within five days from the filing of the notice of appeal, as provided in the last section, an undertaking in double the amount of the judgment appealed from, or if the judgment be for the recovery of specific personal property, in double the value of such property, with at least two sufficient sureties, and conditioned that the party appealing will pay any judgment that may be rendered against him in the district court, as well as all costs that may be awarded against him, and for the prosecution of such appeal with effect.

Undertaking for costs

SEC. 452. If the party appealing be the party in whose favor judgment was rendered, he shall likewise execute and file an undertaking as aforesaid, in a sum equal to double the amount of the costs in the case, conditioned to pay all costs that may be adjudged against him, and for the prosecution of such appeal with effect.

Affidavit of sureties.

SEC. 453. The undertaking provided for in the two preceding sections, shall be accompanied by the affidavit of the sureties that they are residents of the county, and householders or freeholders thereof, and each worth the amount specified in the undertaking, over and above their debts, liabilities, and property by law exempt from execution, but several sureties may state that they are worth less than the amount mentioned in the undertaking, beside such exemptions, if the whole amount equals the amount of two sufficient sureties.

Transcript

SEC. 454. Within ten days after filing the notice of appeal and undertaking provided for in the preceding sections, and payment of fees therefor, the said judge or clerk of said court shall make a full and complete transcript from the docket of all proceedings had in said action, and transmit the same, together with the complaint, answers, motions, pleadings, and all other papers pertaining to or belonging to said cause, to the clerk of said district court.

Stay of proceedings.

SEC. 455. If any execution shall have been issued upon a judgment appealed from, the judge or clerk of said court upon receiving the notice and undertaking, as hereinbefore provided, shall issue an order directing the officer having such execution in his possession, or charged with the execution of the same, to stay all proceedings thereunder. Such officer, upon the payment of his fees for services rendered on such execution, shall thereupon relinquish all property levied upon by him, and deliver the same, together with all money collected from sales or otherwise, to the judgment debtor.

Costs if judgment reduced or enlarged

SEC. 456. If the party appealing to the district court, as provided in this act, shall fail to reduce or enlarge the judgment appealed from, ten dollars or more, or revise the same in said district court, he shall not recover any of the costs of appeal.

Appeal tried upon original papers

SEC. 457. That all appeals taken by virtue of this act shall be tried in the district court upon the papers in the cause, as if the same had originally been instituted in said court, unless said court, upon such terms as may be just, allow other papers to be filed therein, and both appellant and respondent shall have the benefit of objection taken in said probate court.

Sheriff to execute process from probate court

SEC. 458. That the sheriffs of the different counties of this territory are charged with the execution of process issued from said probate court, in like manner as provided for in cases in the district court, for which services they shall receive fees as provided by law.

TITLE XII.—CHAPTER I.

PROCEEDING AGAINST JOINT DEBTORS.

Sec. 459. Defendants not served may be summoned to show cause after judgment.
Sec. 460. Summons under last section.
Sec. 461. Affidavit of plaintiff in such case.
Sec. 462. Answer of defendant—what may contain.
Sec. 463. Pleadings in such case.
Sec. 464. Trial of the issues and verdict.

Parties not served to show cause.

SEC. 459. When a judgment in recovered against one or more of several persons jointly indebted upon an obligation, by proceeding as provided in section seventy-seven, those who were not originally served with the summons, and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment in the same manner as though they had been originally served with the summons.

Summons.

SEC. 460. The summons, as provided in the last section, shall describe the judgment, and require the person summoned to show cause why he should not be bound by it, and shall be served in the same manner, and returnable within the same time, as the original summons. It shall not be necessary to file a new complaint.

Affidavit.

SEC. 461. The summons shall be accompanied by an affidavit of the plaintiff, his agent, representative or attorney, that the judgment, or some part thereof, remains unsatisfied, and shall specify the amount due thereon.

Answer.

SEC. 462. Upon such summons the defendant may answer within the time specified therein, denying the judgment or setting up any defense which may have arisen subsequently; or he may deny his liability on the obligation upon which the judgment was recovered, except a discharge from such liability by the statute of limitations.

Allegations.

SEC. 463. If the defendant in his answer deny the judgment or set up any defense which may have arisen subsequently, the summons, with the affidavit annexed, and the answer shall constitute the written allegations in the case; if he deny his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons, with the affidavit annexed, and the answer, shall constitute such written allegations.

Trial

SEC. 464. The issues formed may be tried as in other cases; but when the defendant denies in his answer any liability on the obligations upon which the judgment is rendered, if a verdict be found against him, it shall be for the amount remaining unsatisfied on such original judgment, with interest thereon.

CHAPTER II.

CONFESSION OF JUDGMENT WITHOUT ACTION.

Sec. 465. When and where judgment by confession may be entered.
Sec. 466. Statement to authorize entry of judgment.
Sec. 467. Statement filed and entry of judgment.

Confession of judgment without action.

SEC. 465. A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter. Such judgment may be entered in any court having jurisdiction for like amounts.

Statement.

SEC. 466. A statement in writing shall be made and signed by the defendant, and verified by his oath, to the following effect:

First. It shall authorize the entry of judgment for a specified sum.

Second. If it be for money due or to become due, it shall state concisely the facts out of which it arose, and shall show that the sum confessed therefor is justly due or to become due.

Third. If it be for the purpose of securing the plaintiff against a contingent liability, it shall state concisely the facts constituting the liability, and shall show that the sum confessed therefor does not exceed the same.

Judgment roll.

SEC. 467. The statement shall be filed with the clerk of the court in which the judgment is to be entered, who shall endorse upon it and enter in the judgment book a judgment of such court for the amount confessed, with costs. The statement and affidavit with the judgment endorsed shall thereupon become the judgment roll.

CHAPTER III.

SUBMITTING A CONTROVERSY WITHOUT ACTION.

Sec. 468. Agreed case, how submitted and judgment in.
Sec. 469. Entry of judgment.
Sec. 470. Enforcement of and appeal from such judgment.

Agreed case.

SEC. 468. Parties to a question in difference which might be the subject of a civil action, may without action agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which should have jurisdiction if an action had been brought; but it must appear by affidavit that the controversy is real, and the proceedings in good faith, to determine the rights of the parties. The court shall thereupon hear and determine the case and render judgment thereon, as if an action were depending.

Judgment roll

SEC. 469. Judgment shall be entered in the judgment book as in other cases, but without costs for any proceeding prior to the trial. The case, the submission, and a copy of the judgment, shall constitute the judgment roll.

How judgment may be enforced; appeal.

SEC. 470. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be in the same manner subject to appeal.

CHAPTER IV.

OFFER OF THE DEFENDANT TO COMPROMISE THE WHOLE OR PART OF AN ACTION.

Sec. 471. Offer of compromise: how accepted and effect of.

Offer of compromise, acceptance and non-acceptance

SEC. 471. The defendant may at any time before the trial or judgment, serve upon the plaintiff an offer to allow judgment to be taken against him for the sum or property, or to the effect therein specified. If the plaintiff accept the offer and give notice thereof within five days, he may file the summons, complaint, and offer, with an affidavit of notice of acceptance, and the clerk shall thereupon enter judgment accordingly. If the notice of acceptance be not given, the offer shall be deemed withdrawn and shall not be given in evidence: and if the plaintiff fail to obtain a more favorable judgment, he shall not recover costs, but shall pay the defendant's costs from the time of the offer.

CHAPTER V.

OF ARBITRATIONS.

Sec. 472. Submission of controversy to arbitration.
Sec. 473. To be in writing.
Sec. 474. May be made an order of court: effect of.
Sec. 475. Powers of arbitrators.
Sec. 476. Meetings and oath of arbitrators.
Sec. 477. Award to be in writing: entry of judgment.
Sec. 478. Grounds on which award may be vacated.
Sec. 479. Grounds upon which award modified or corrected.
Sec. 480. Decision subject to appeal but judgment not.
Sec. 481. Recovery when decision revoked.

Submission to arbitration

SEC. 472. Persons capable of contracting may submit to arbitration any controversy which might be the subject of a civil action between them, except a question of title to real property in fee or for life. This qualification shall not include questions relating merely to the partition or boundaries of real property.

Submission to be in writing.

SEC. 473. The submission to arbitration shall be in writing, and may be to one or more persons.

Submission may be entered as order of court

SEC. 474. It may be stipulated in the submission that it be entered as an order of the probate court or of the district court, for which purpose it shall be filed with the clerk of the court. The clerk shall thereupon enter into his register of actions a note of the submission, with the names of the parties, the names of the arbitrators, the date of the submission, when filed, and the time limited by the submission, if any, within which the award shall be made. When so entered the submission shall not be revoked without the consent of both parties. The arbitrators may be compelled by the court to make an award, and the award may be enforced by the court in the same manner as a judgment. If the submission be not made an order of the court, it may be revoked at any time before award is made.

Powers of arbitrators

SEC. 475. Arbitrators shall have power to appoint a time and place for hearing; to adjourn from time to time; to administer oaths to witnesses; to hear allegations and evidence of the parties, and to make award thereon.

Majority may determine question, oath

SEC. 476. All the arbitrators shall meet and act together during the investigation; but when met, a majority may determine any question. Before acting they shall be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and examine the allegations and evidence of the parties in relation to the matter in controversy, and to make a just award according to their understanding.

Award.

SEC. 477. The award shall be in writing, signed by the arbitrators, or a majority of them, and delivered to the parties. When the submission is made an order of the court, the award shall be filed with the clerk, and a note thereof made in his register. After the expiration of five days from the filing of the award, upon the application of a party, and on filing an affidavit showing that notice of filing the award has been served on the adverse party or his attorney, at least four days prior to such application, and that no order staying the entry of judgment has been served, the award shall be entered by the clerk in the judgment book, and shall thereupon have the effect of a judgment.

Award may be vacated.

SEC. 478. The court, on motion, may vacate the award upon either of the following grounds, and may order a new hearing before the same arbitrators, or not, at its discretion:

First. That it was procured by corruption or fraud.

Second. That the arbitrators were guilty of misconduct, or committed gross error in refusing, on cause shown, to postpone the hearing or refusing to hear pertinent evidence, or otherwise acted improperly, in a manner by which the rights of the party were prejudiced.

Third. That the arbitrators exceeded their powers in making their award; or that they refused or improperly omitted to consider a part of the matter submitted to them; or that the award is indefinite, or cannot be performed.

Award may be modified or corrected.

SEC. 479. The court may, on motion, modify or correct the award where it appears—

First. That there was a miscalculation in figures upon which it was made, or that there is a mistake in the description of some person or property therein.

Second. When a part of the award is upon matters not submitted, which part can be separated from other parts, and does not affect the decision on the matters submitted.

Third. When the award, though imperfect in form, could have been amended if it had been a verdict or the imperfection disregarded.

Appeal.

SEC. 480. The decision upon the motion shall be subject to appeal in the same manner as an order which is subject to appeal in a civil action; but the judgment entered before motion is made shall not be subject to appeal.

Recovery in case of revocation.

SEC. 481. If a submission to arbitration be revoked and an action be brought therefor, the amount to be recovered shall only be the costs and damages sustained in preparing for and attending the arbitration.

CHAPTER VI.

ORDERS AND MOTIONS.

Sec. 482. Orders and motions defined.
Sec. 483. Motions where made: notice of.
Sec. 484. Time in which written notice given
Sec. 485. Hearing of may be transferred to another judge.
Sec. 486. Order to pay money enforced as an execution.

Order and motion defined

SEC. 482. Every direction of a court or judge made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion.

SEC. 483. Motions shall be made in the county in which the action is brought, or in any adjoining county in the same district: *Provided, however*, That in case of the absence of the judge of the district from his district, such motion may be made before the judge of any adjoining district. Written notice of a motion, as provided in this act, shall only be required in case of a motion made out of term time. Notice of a motion made in term time, except those made during the progress of a trial shall be entered in a book to be kept for that purpose, and called the "motion book;" and such motion shall be for hearing after twenty-four hours from the time such notice is entered in the motion book.

Motions: where made; notice

SEC. 484. When a written notice of a motion is necessary, it shall be given, if the court be held in the same district with both parties, five days before the time appointed for the hearing, otherwise ten days; but the court or judge may prescribe a shorter time.

Notice: for what time given

SEC. 485. When a notice of motion is given, or an order to show cause is made returnable before a judge out of court, and at the time fixed for the motion, or on the return day of the order, the judge is unable to hear the parties, the matter may be transferred by his order to some other judge before whom it might originally have been brought.

Hearing may be transferred

SEC. 486. Whenever an order for the payment of a sum of money is made by a court, pursuant to the provisions of this code, it may be enforced by execution in the same manner as if it were a judgment.

Execution upon order

CHAPTER VII.

NOTICES, AND FILING AND SERVICE OF PAPERS.

Sec. 487. To be in writing and served on party or attorney.
Sec. 488. Manner of service.
Sec. 489. Service by mail.
Sec. 490. How served by mail: when deemed complete.
Sec. 491. Appearance of defendant: entitled to notice.
Sec. 492. Service made on clerk for non-resident.
Sec. 493. What the provisions of this chapter inapplicable to.

SEC. 487. Notices must be in writing, and notices and other papers may be served upon the party or attorney in the manner prescribed in this chapter, when not otherwise provided by this code.

Notices.

Service of notice.

SEC. 488. The service may be personal, by delivery to the party or attorney on whom service is required to be made, or it may be as follows:

First. If upon an attorney, it may be made during his absence from his office by leaving the notice or other papers with his clerk therein, or with a person having charge thereof; or when there is no person in the office, by leaving them, between the hours of eight in the morning and six in the afternoon, in a conspicuous place in the office; or if it be not open so as to admit of such service, then by leaving them at the attorney's residence with some person of suitable age and discretion; and if his residence be not known, then by putting the same, enclosed in an envelope, into the postoffice, directed to such attorney.

Second. If upon a party, it may be made by leaving the notice or other paper at his residence, between the hours of eight in the morning and six in the evening, with some person of suitable age and discretion; and if his residence be not known, by putting the same, enclosed in an envelope, into the postoffice, directed to such party.

Service by mail may be made.

SEC. 489. Service by mail may be made when the person making the service and the person on whom it is to be made reside in different places, between which there is a regular communication by mail.

Service by mail: how made

SEC. 490. In case of service by mail the notice or other paper shall be deposited in the postoffice, addressed to the person on whom it is to be served, at his place of residence, and the postage paid. And in such case the time of service shall be increased one day for every twenty-five miles distance between the place of deposit and the place of address: *Provided*, That service in any case shall be deemed complete at the end of forty days from the date of its deposit in the postoffice.

Appearance.

SEC. 491. A defendant shall be deemed to appear in action when he answers, demurs, or gives the plaintiff a written notice of his appearance, or when an attorney gives notice of an appearance for him. After appearance a defendant, or his attorney, shall be entitled to notice of all subsequent proceedings of which notice is required to be given. But when a defendant has not appeared, service of notice or papers need not be made upon him, unless he be imprisoned for want of bail.

Service upon unrepresented non-resident

SEC. 492. When a plaintiff or a defendant who has appeared resides out of the territory and has no attorney in the action or proceeding, the service may be made on the clerk for him. But in all cases where the party has an attorney in the action or proceeding, the service of papers when required shall be upon the attorney instead of the party, except of subpœnas, writs, and other process, issued in the suit, and of papers to bring him into contempt.

Construction.

SEC. 493. The foregoing provisions of this chapter do not apply to the service of a summons or other process, or of any paper to bring a party into contempt.

CHAPTER VIII.

OF COSTS.

Sec. 494. Compensation of attorneys: costs.
Sec. 495. When costs allowed plaintiff of course.
Sec. 496. Costs allowed only in one action when defendant's might have been joined.
Sec. 497. Costs allowed of course in an action under section 495 and in special proceedings.
Sec. 498. In other actions may be allowed or not: no costs where recovery less than $50.
Sec. 499. Where there are several defendants, costs allowed successful ones.
Sec. 500. In what cases in discretion of court.
Sec. 501. Fees of referees.
Sec. 502. Costs on appeal from probate and justice's court.
Sec. 503. On postponement of trial.
Sec. 504. When tender is made and deposited.
Sec. 505. Costs when administrator or trustee is a party.
Sec. 506. When case is reviewed by higher court.
Sec. 507. Memorandum of costs and disbursements.
Sec. 508. Need not include certain fees.
Sec. 509. Penalty for including illegal items in memorandum.
Sec. 510. Motion to re-tax costs.
Sec. 511. No costs allowed witnesses unless affidavit made.
Sec. 512. Costs after remittitur is filed.
Sec. 513. Interest and costs to be included in the judgment.
Sec. 514. Security for costs may be required of non-residents.

Sec. 515. When action dismissed for want of security.
Sec. 516. Action in forma pauperis.
Sec. 517. Certain officers may prosecute or defend without security.
Sec. 518. Fees to be paid on demand.
Sec. 519. Jury fees to be taxed as costs.
Sec. 520. Procedure to collect costs.
Sec. 521. Officers to furnish itemized account of their costs.
Sec. 522. Costs in probate court to follow the judgment regardless of the amount.

Costs.

SEC. 494. The measure and mode of compensation of attorneys and counsellors shall be left to the agreement, express or implied, of the parties; but there shall be allowed to the prevailing party in any action in the supreme court, district courts, and probate courts, his costs and necessary disbursements in the action or special proceeding in the nature of an action.

12th ses. p. 11
Costs allowed to plaintiff.

SEC. 495. Costs may be allowed, of course, to the plaintiff upon a judgment in his favor in the district court in the following cases:

First. In an action to recover real property.

Second. In an action to recover the possession of personal property when the value of the property amounts to fifty dollars or over, such value shall be determined by the jury, court, or referee by whom the action is tried.

Third. In an action for the recovery of money or damages when the plaintiff recovers fifty dollars or over.

Fourth. In special proceedings in the nature of an action.

NOTE—Section 495 from act of Feb 23rd. 1881.

No costs for more than one action for same cause.

SEC. 496. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action, against several parties who might have been joined as defendants in the same action, no costs shall be allowed to the plaintiff in more than one of such actions, which may be at his election, if the party proceeded against in the other actions were, at the commencement of the previous action, openly within the territory; but the disbursements of the plaintiff shall be allowed to him in each action.

SEC. 497. Costs shall be allowed, of course, to the defendant, upon a judgment in his favor in the actions mentioned in section 495 of this chapter, and in a special proceeding in the nature of an action.

Costs allowed defendant

SEC. 498. In other actions than those mentioned in section 495 of this act, costs may be allowed or not, and if allowed, may be apportioned between the parties, on the same or adverse sides, in the discretion of the court; but no costs shall be allowed in an action begun in the district court for the recovery of money or damages when the plaintiff recovers less than fifty dollars, nor in any action begun in the same court to recover the possession of personal property when the value of the property is less than fifty dollars.

12th ses p 11

Costs in other cases

NOTE—Section 498 from act of Feb 23rd, 1881.

SEC. 499. When there are several defendants in the actions mentioned in section 495 of this act not united in interest, and making separate defenses by separate answers, and the plaintiffs fail to recover judgment against all, the court shall award costs to such of the defendants as have judgment in their favor.

Costs allowed one or more of several defendants.

SEC. 500. In the following cases the costs of an appeal shall be in the discretion of the court:

Costs in certain cases in discretion of court.

First. When a new trial is ordered.

Second. When a judgment is modified.

SEC. 501. The fees of referees shall be eight dollars to each for every day spent in the business of the reference; but the parties may agree in writing upon any other rate of compensation, and thereupon such rate shall be allowed.

Fees of referees

SEC. 502. In all cases of appeal from the judgment of probate court or justice of the peace, when the judgment of such probate court or justice of the peace shall be wholly affirmed or reversed, the party succeeding shall recover from the opposite party his costs, not only in the district court, but before the probate court or justice of the peace, and shall have his execution therefor. When the judgment of the court below shall be affirmed in part, then the court shall divide the costs between the parties according to the justice of the case.

Costs in appeal cases.

SEC. 503. When an application is to made a court or referee to postpone a trial, the payment of the costs occasioned by the postponement may be imposed in the discretion of the court or referee, as a condition of granting the same.

Pre-payment of costs.

Costs in case of tender and deposit

SEC. 504. When, on an action for the recovery of money only, the defendant in his answer alleges that before the commencement of the action he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in court for the plaintiff the amount so tendered, and the allegation be found to be true, the plaintiff shall not recover costs, but shall pay costs to the defendant.

Costs where trustee, etc., is party

SEC. 505. In an action prosecuted or defended by an executor, administrator, or trustee of express trust, or a person expressly authorized by statute, costs may be recovered as in action by and against a person prosecuting or defending his own right; but such costs shall by the judgment be made chargeable only upon the estate, fund, or party represented, unless the court shall direct the same to be paid by the plaintiff or defendant, personally, for the mismanagement or bad faith in the action or defense.

Costs upon review.

SEC. 506. When the decision of a court of inferior jurisdiction in a special proceeding is brought before a court of higher jurisdiction for a review in other way than by appeal, the same costs shall be allowed as in cases on appeal, and may be collected by execution, or in such manner as the court may direct, according to the nature of the case.

Memorandum of disbursements.

SEC. 507. The party in whose favor judgment is rendered, and who claims his costs, shall deliver to the clerk of the court, within two days after the verdict or decision of the court, a memorandum of the items of his costs and necessary disbursements in the action or proceeding; which memorandum shall be verified by the oath of the party, or his attorney, stating that the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding.

Items to be included in memorandum

SEC. 508. But such memorandum need not include the legal fees or costs of any officer of the court, or any witness fees when an affidavit of such witness' attendance is required by law to be made.

Penalty for false memorandum

SEC. 509. If any party shall include in such memorandum any item to which he is not entitled, or if any clerk, sheriff, referee, or other officer shall include such item in the taxed costs, and a motion to retax the same shall be made by the party against whom the same is taxed, and if such motion to retax shall prevail, there shall be taxed, as a part of the cost of such motion, a docket fee of twenty-five dollars, and judgment therefor, with the other costs allowed by law, shall be entered against the party, sheriff, referee, clerk, or other officer who so unlawfully taxed the same, and the same may be off-set against any costs or judgment in favor of the party or officer so improperly taxing such cost, and against the party making such motion; or if no such judgment exists, the court may direct that the party making such motion have execution therefor.

Motion to tax costs.

SEC. 510. A party dissatisfied with the costs claimed may, within ten days after notice of filing of the bill of costs, file a motion to have the same taxed by the court in which the judgment was rendered, or by the judge thereof, at chambers.

Affidavit of witnesses.

SEC. 511. *Provided, however*, That no allowance or charge shall be made for the attendance of witnesses, unless the witness shall make affidavit before the clerk of the number of days he or she actually attended, and of the distance he or she shall have traveled, and that such attendance was at the instance of one or both parties, or his, her, or their attorney.

Memorandum of costs after remittitur.

SEC. 512. Whenever costs are awarded to a party by an appellate court, if he claims such costs he must, within thirty days after the remittitur is filed with the clerk below, deliver to such clerk a memorandum of his costs, verified as prescribed by the preceding section, and thereafter he may have an execution therefor, as upon a judgment.

Clerk to include costs in judgment.

SEC. 513. The clerk shall include in the judgment entered up by him any interest on the verdict or decision of the court, from the time it was rendered or made, and the costs, if the same have been taxed or ascertained, and he shall within two days after the same shall be taxed or ascertained if not included in the judgment, insert the same in a blank left in the judgment for that purpose, and shall make a similar insertion of the costs in the copies and docket of the judgment.

Non-resident litigant may be required to give security for costs

SEC. 514. When a plaintiff in an action resides out of the territory, or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant. When required all proceedings in the action shall be stayed until an undertaking, executed by two or more persons, be filed with the clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of three hundred dollars. A new or additional undertaking may be ordered by the court or judge, upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new additional undertaking be executed and filed.

Action dismissed if security not given.

SEC. 515. After the lapse of thirty days from the service of notice that security is required, or of an order that new or additional security, upon proof thereof, and that no undertaking, as required, has been filed, the court or judge may order the action to be dismissed.

Poor person may sue without costs.

SEC. 516. That any person may commence and prosecute an action in any of the courts in this territory who will file an affidavit, stating that he has a good cause of action, that he is unable to pay the costs in money, or to procure security to secure the same: then it is hereby made the duty of the officers of the courts to issue all writs, and serve the same, without demanding or receiving their fees in advance.

Territory not required to give bonds or prepay costs

SEC. 517. Whenever it shall be necessary for any territorial, district, or county officer to commence, prosecute, or defend any suit by attachment, or otherwise, on behalf and in the name of the Territory of Montana, under the provisions of any statute of this territory, such officer shall so commence, prosecute, or defend any such suit without giving bond; nor shall any such officer, when prosecuting any suit on behalf of the territory, or any county thereof, be required to pay or deposit any fee or amount before or during the prosecution of any such suit; nor shall any officer so prosecuting or defending be taxed with costs or damage, but such cost or damage, when such officer shall fail to sustain his suit, shall be taxed to the said county or territory, as the case may be.

Pre-payment of fees.

SEC. 518. Each party to a civil action shall be required to pay the fees fixed by law for the performance of any service or duty by any officer of such court at the instance of such party at the time such service is rendered, except in the case hereinbefore mentioned and no such officer shall be required to perform such service or duty unless the fees fixed therefor shall, on demand, be first paid or tendered.

12th ses p 56.

Jury fees to be taxed as costs

SEC. 519. In all civil actions which shall be tried by a jury in the justice's court, probate court, or district court within this territory, the fees of the jury shall be taxed against the unsuccessful party, and collected in the same manner as other costs in the action and when collected shall be paid to the county treasurer of the proper county by the officer collecting the same. The county treasurer shall execute and deliver to the officer paying said costs a receipt therefor, and shall transfer said moneys so collected to the general fund of the county. This section shall not be so construed as to effect the obligation of the county in which civil actions shall be tried to pay the fees of the jury therein to the jurors.

NOTE—Section 519 act of Feb 21, 1881

R S, p. 190

Collection of costs

SEC. 520. In all cases, after final judgment, it shall be lawful for the clerk to make out a tax-bill of costs against the party incurring said costs, and certify the same under the seal of the court, which being delivered to the sheriff of the proper county, he shall demand payment thereof from the person therein charged, and if payment shall not be made within twenty days after such demand, the sheriff shall levy the same on the goods and chattels, lands and tenements of the person so chargeable, and proceed thereon in all things as on a writ of execution.

R S, p 191.

Itemized statement of fees to be furnished.

SEC. 521. To the end that all persons chargeable with fees due to any sheriff, clerk, or any officer of any court in this territory, may certainly know for what the same is chargeable, none of the fees of any such officers shall be payable to any such officer until an itemized account of the same shall have been presented to the person chargeable with the same, and signed by the officer to whom the same are payable, or until a fee-bill shall have been issued by the clerk as above provided.

Costs in probate court

SEC. 522. In all cases adjudicated in the probate court, the costs shall follow the judgment without reference to the amount or value of the property in controversy, and such costs shall be taxed by said court in favor of the prevailing party.

NOTE—Sections 520, 521 and 522 from act of Feb. 13, 1874.

CHAPTER IX.

MISCELLANEOUS PROVISIONS.

Sec. 523. Supreme and district courts may make rules.
Sec. 524. Judges may take acknowledgments and affidavits.
Sec. 525. No vacancy or failure of term to affect actions.
Sec. 526. Use of English language and abbreviations.
Sec. 527. What courts shall have a seal.
Sec. 528. Clerk to keep the seal.
Sec. 529. How seal affixed.
Sec. 530. When courts may be held.

Sec. 531. Non-judicial days; when business transacted thereon. Proceedings when judge not present on day of commencement of a term.
Sec. 532. Where courts shall be held.
Sec. 533. Actions against sheriffs: notice to and judgment against sureties.
Sec. 534. Clerk to keep a register of actions.
Sec. 535. Two of three arbitrators or referees may act.
Sec. 536. Computation of time under this act.
Sec. 537. When papers without title valid.
Sec. 538. Limitation of actions arising out of the territory.
Sec. 539. What certain words and terms to include and signify.
Sec. 540. Sureties on undertaking to make affidavit of worth.
Sec. 541. When court may order attached property sold before judgment.
Sec. 542. Copy of record to be evidence.
Sec. 543. Courts of record.
Sec. 544. Courts to sit in public.
Sec. 545. Divorce trials may be private.
Sec. 546. Powers of a court to enforce its authority.
Sec. 547. In what cases judges shall not act as such.
Sec. 548. Judge shall not act as attorney in his own court.
Sec. 549. Judge of supreme or district court shall not act as attorney in any court, except.
Sec. 550. Judge or justice shall not have an attorney as partner.
Sec. 551. Application for an order refused in one court cannot be entertained in another.
Sec. 552. Contempt to violate last section and order vacated.
Sec. 553. Judge may order privilege to inspect books, papers, etc.

Rules of court.

SEC. 523. The supreme court, and each of the district courts, shall respectively have power to make rules and regulations for governing their practice and procedure in reference to all matters not provided for by law.

Judges and justices of peace may take acknowledgements and affidavits

SEC. 524. The judges of the supreme court, of the district courts, and of the probate courts, shall have power, in any part of the territory, and justices of the peace within their respective counties shall have power, to take and certify:

First. The proof and acknowledgment of a conveyance of real property, or any other instrument required to be proved or acknowledged.

Second. An affidavit to be used in any court of justice in this territory.

Action not affected by vacancy in office or failure of term

SEC. 525. No action or proceeding in a court of justice shall be affected by a vacancy in the office of all or any of the judges, or by a failure of a term thereof.

Proceedings shall be in English language.

SEC. 526. Every written proceeding in a court of justice in this territory, or before a judicial officer, shall be in the English language, but such abbreviations as are now commonly used in that language may be used, and numbers may be expressed by figures or numerals, in the customary manner.

Seal of court.

SEC. 527. Each of the following courts and no others shall have a seal:

First. The supreme court.

Second. The district courts.

Third. The probate courts.

Clerk shall keep seal.

SEC. 528. The clerk of each court shall keep the seal thereof.

How seal may be affixed.

SEC. 529. The seal may be affixed by impressing it upon the paper, or on a substance attached to the paper and capable of receiving the impression.

Judicial days

SEC. 530. The courts of justice may be held, and judicial business may be transacted, on any day except as provided in the next section.

Non-judicial days; what business may be transacted.

SEC. 531. No court shall be opened, nor shall any judicial business be transacted on Sunday, New Year's day, Fourth of July, Christmas day, Washington's birthday, Thanksgiving day, or on a general election, except for the following purposes:

First. To give, upon their request, instructions to a jury then deliberating on their verdict.

Second. To receive a verdict or discharge a jury.

Third. For the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature.

Fourth. When it shall appear by the affidavit of the plaintiff, or some one in his behalf, in cases for the recovery of specific personal property, that the defendant is about to conceal, dispose of, or remove such property out of the jurisdiction of the court, an order for taking possession of the same may be issued on any day.

Fifth. When an application for a writ of attachment is made, and it shall appear by the affidavit of the plaintiff, or some one in his behalf, that the defendant is about to dispose of, conceal, or remove property subject to execution or attachment, out of the jurisdiction of the court, a writ of attachment may be issued on any day.

Adjournment of court upon non-judicial days and in case of non-appearance of judge

When the day fixed for the opening of a court shall fall on any of the days mentioned in this section, the court shall stand adjourned until the next succeeding day. When on the day appointed for the commencement of any term of the supreme or district court, the judges or judge of such court being not present to hold the same, the clerk of the court shall adjourn such term of court, from day to day, until the expiration of one week from the day appointed for the commencement of the term, noting such adjournment in the minutes each day; and if the judges or judge of such court be not then present to hold such term on the day one week from the time appointed for such term to commence, the clerk shall adjourn the court for the term, and make an entry on the minutes thereof. If the judges or judge shall appear on any day to which the court has been adjourned by the clerk, as above provided, the court shall proceed in the same manner and with the same effect as if the judges or judge had been present and the court had been regularly opened on the day appointed for the term to commence.

Where court shall sit

SEC. 532. Every court of justice, except a justice's court, shall sit at the county seat of the county in which it is held, except as may be otherwise provided by law. No justice of the peace shall hold a court in any other county or city than the one from which he shall have been elected.

Judgment on indemnity bond.

SEC. 533. In an action brought against a sheriff for an act done by virtue of his office, if he give written notice thereof to the sureties on any bond of indemnity received by him, the judgment recovered therein shall be sufficient evidence of his right to recover against such sureties; and the court or judge, in vacation, may, on motion, upon notice of five days, order judgment to be entered up against them for the amount so recovered, including costs.

SEC. 534. The clerk shall keep among the records of the court a register of actions; he shall enter therein a title of the action, with brief notes under it from time to time of all papers filed and proceedings had therein.

Register of actions

SEC. 535. When there are three referees or three arbitrators, all shall meet; but two of them may do any act which might be done by all.

Two arbitrators or referees may act.

SEC. 536. The time within which an act is to be done, as provided in this act, shall be computed by excluding the first day and including the last; if the last day be Sunday it shall be excluded. When the act to be done relates to the pleadings in the action, or the undertakings to be filed, or the justification of sureties, or the service of notices other than appeal, or the preparation of statement, or of bills of exceptions, or of amendments thereto, the time allowed by this act may be extended, upon good cause shown, by the court in which the action is pending, or the judge thereof, or, in the absence of such judge from the county in which the action is pending, by the probate judge; but such extension shall not exceed thirty days beyond the time prescribed by this act, without the consent of the adverse party.

Computation and extension of time

SEC. 537. An affidavit, notice, or other paper, without the title of the action or proceeding in which it is made, or with a defective title, shall be as valid and effectual for any purpose as if duly entitled, if it intelligibly refer to such action or proceeding.

Validity of paper without title of action

SEC. 538. When a cause of action has arisen in another state or territory, or in a foreign country, and by the laws thereof an action thereon cannot be there maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against him in this territory, except in favor of a citizen thereof, who has held the cause of action from the time that it accrued.

Action barred under law of another jurisdiction barred here

SEC. 539. Words used in this act in the present tense shall be deemed to include the future as well as the present; words used in the singular number shall be deemed to include the plural, and the plural the singular; and words used to include the masculine gender, shall include the feminine gender; writing shall be deemed to include printing or printed paper; oath to include affirmation or declaration; signature or subscription to include mark, when the person cannot or is unable to write, his name being written near it, and witnessed by a person who writes his own name as a witness.

Construction of words.

Affidavit of sureties.

SEC. 540. In all cases where an undertaking by the provisions of this act, is required, it shall be the duty of the person taking the same to require the sureties to accompany the same with an affidavit that they are each worth the sum specified in the undertaking, over and above their just debts, liabilities, and property exempt by law from execution: *Provided*, That when the amount specified in the undertaking exceeds three thousand dollars, and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties.

Sale of attached property.

SEC. 541. Whenever property has been taken by an officer, under a writ of attachment, in pursuance of the provisions of this act, and it shall be made to appear satisfactorily to the court, or a judge thereof, or a probate judge, that the interest of the parties to the action will be subserved by a sale thereof, the court or judge may order such property to be sold, in the same manner as property is sold under an execution, and the proceeds to be deposited in court to abide the judgment in the action. Such order shall be made only upon notice to the adverse party or his attorney, in case such party has peen personally served with summons in the action.

Documentary evidence

SEC. 542. A copy of any record, or document, or paper, in the custody of a public officer of this territory, or of the United States within this territory, certified under the official seal, or verified by the oath of such officer to be a true, full, and correct copy of the original in his custody, may be read in evidence in an action or proceeding in the courts of this territory, in the like manner, and with the like effect, as the original could be if produced. The receipt or certificate signed by the register or receiver of any United States land office of the entry or purchase of any tract of land, or of any tract by any land warrant, is *prima facia* evidence in the courts of this territory that the title to the land mentioned or described in said receipt or certificate, is in the person named therein, his heirs or assigns.

Patents issued by the United States to lands in this territory, or duplicates thereof from the records in the general land office, and the register's or receiver's receipt or certificate mentioned in this section, may be recorded in the registry of deeds of the county in which the land described in the patent is situated, and the record of such patents, or duplicates, or copies of such record, certified by the register of deeds, shall be evidence in like manner, and to the same extent as the records or transcripts thereof of other conveyances of real estate.

That portion of Sec 542 referring to register or receiver's receipt and patents is taken from act of February 5, 1876

Courts of record.

SEC. 543. The supreme court, the several district courts, and the several probate courts of this territory, shall be courts of record.

Public sitting of court

SEC. 544. The sittings of every court of justice shall be public except as provided in the next section.

Trial in divorce case may be private.

SEC. 545. In an action for divorce the court may direct the trial of any issue of fact joined therein to be private, and upon such direction all persons may be excluded except the officers of the court, the parties, their witnesses, and counsel.

Power of court.

SEC. 546. Every court shall have power:

First, To preserve and enforce order in its immediate presence.

Second. To enforce order in the proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority.

Third. To compel obedience to its lawful judgments, orders, and process, and to the lawful orders of its judge out of court in an action or proceeding pending therein.

Fourth To control in furtherance of justice, the conduct of its ministerial officers.

When judge shall not act as such.

SEC. 547. A judge shall not act as such in any of the following cases: In an action or proceeding to which he is a party, or in which he is interested; when he is related to either party by consanguinity or affinity within the third degree; or when he has been attorney or counsel for either party in the action or proceeding.

Judge shall not act as attorney.

SEC. 548. A judge shall not act as attorney or counsel in a court in which he is a judge, or in an action or proceeding removed therefrom to another court for review, or in any action or proceeding from which an appeal may lie in his own court.

Judge shall not act as attorney.

SEC. 549. A judge of the supreme court, or of the district court shall not act as attorney or counsel in any court, except in an action in which he is a party to the record.

Justice of peace not to have law partner

SEC. 550. A judge or justice of the peace shall not have a partner acting as attorney or counsel in any court in this territory.

Application shall be made to one judge only.

SEC. 551. If an application for an order, made to a judge of a court in which the action or proceeding is pending, be refused, in whole or in part, or be granted conditionally, no subsequent application for the same order shall be made to any other judge, except of a higher court: *Provided*, That nothing in this section shall be so construed as to apply to motions refused for any informalities in the papers or proceedings necessary to obtain an order.

Penalty for violation of last section.

SEC. 552. A violation of the last section may be punished as a contempt, and an order made contrary thereto may be revoked by the judge who made it, or vacated by a judge of a court in which the action or proceeding is pending.

12th ses p 11

Inspection and copies of papers

Penalty for violating order.

SEC. 553. Any court in which an action is pending, or a judge thereof, may upon notice, order either party to give to the other within a specified time, an inspection and copy, or permission to take a copy, of any book, document, or paper in his possession or under his control, containing evidence relating to the merits of the action or the defense therein. If compliance with the order be refused, the court may exclude the book, document, or paper from being given in evidence, or, if wanted as evidence by the party applying, may direct the jury to presume it to be such as he alleged it to be; and the court may also punish the party refusing as for a contempt. This section shall not be construed so as to prevent a party from compelling another to produce books, papers, or documents, when he is examined as a witness.

NOTE —Sec. 553 is from act of Feb. 23d, 1881.

TITLE XIII.

CHAPTER I.

OF THE WRIT OF CERTIORARI AND MANDAMUS.

Sec. 554. Writ of review.
Sec. 555. When writ may be granted.
Sec. 556. Application for, how made.
Sec. 557. Writ, how directed and return of.
Sec. 558. What may be required by writ.
Sec. 559. May contain order staying proceedings
Sec. 560. How served.
Sec. 561. How far review upon writ may extend.
Sec. 562. Return of writ, hearing and judgment upon.

Sec. 563. Copy of judgment transmitted to inferior tribunal.
Sec. 564. Judgment roll and appeal from judgment.

SEC. 554. The writ of *certiorari* may be denominated the writ of review.

Writ of review.

SEC. 555. This writ may be granted, on application, by any court of this territory except a justice's, probate, or mayor's court. The writ shall be granted in all cases when an inferior tribunal, board, or officer exercising judicial functions, has exceeded the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy.

When writ may be granted

SEC. 556. The application shall be made on affidavit by the party beneficially interested; and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

Application and notice

SEC. 557. The writ may be directed to the inferior tribunal, board, or officer, or to any other person having the custody of the record or proceedings to be certified; when directed to a tribunal, the clerk, if there be one, shall return the writ with the transcript required.

Writ· to whom directed

SEC. 558. The writ of review shall command the party to whom it is directed to certify fully to the court issuing the writ, at a specified time and place, and annex to the writ a transcript of the record and proceedings (describing or referring to them with convenient certainty), that the same may be reviewed by the court; and requiring the party in the meantime to desist from further proceedings in the matter to be reviewed.

Writ. what it may require

See section 582

SEC. 559. If a stay of proceedings be not intended, the words requiring the stay shall be omitted from the writ; these words may be inserted or omitted, in the sound discretion of the court, but if omitted, the power of the inferior court or officer shall not be suspended, nor the proceedings stayed.

Words requiring stay may be omitted or inserted

SEC. 560. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by the court.

Service of writ

SEC. 561. The review upon this writ shall not be extended further than to determine whether the inferior tribunal, board, or officer, has regularly pursued the authority of such tribunal, board, or officer.

Extent of review

Return of writ.

SEC. 562. If the return of the writ be defective the court may order a further return to be made. When a full return has been made the court shall proceed to hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment either affirming or annulling or modifying the proceedings below.

Copy of judgment

SEC. 563. A copy of the judgment, signed by the clerk, shall be transmitted to the inferior tribunal, board or officer having the custody of the record or proceeding certified up.

Judgment roll.

SEC. 564. A copy of the judgment, signed by the clerk, entered upon or attached to the writ and return, shall constitute the judgment roll. If the proceeding be had in any other than the supreme court, an appeal may be taken from the judgment in the same manner and upon the same terms as from a judgment in a civil action.

CHAPTER II.

THE WRIT OF MANDATE OR MANDAMUS.

Sec. 565. Mandamus denominated mandate.
Sec. 566. By what authority and for what issued.
Sec. 567. In what cases and how issued.
Sec. 568. Forms of alternative and peremptory writs.
Sec. 569. When either writ issued and notice.
Sec. 570. On return of defendant may show cause.
Sec. 571. When question may be tried by jury.
Sec. 572. Plaintiff not concluded by the answer.
Sec. 573. Motion for new trial.
Sec. 574. Clerk to transmit certified copy of verdict, etc.
Sec. 575. Hearing of the application.
Sec. 576. What judgment for applicant if he recover.
Sec. 577. Writ, how served.
Sec. 578. Power of court to punish disobedience.

Writ of mandate.

SEC. 565. The writ of *mandamus* may be denominated the writ of mandate.

Writ: by whom and for what purpose issued.

SEC. 566. It may be issued by any court in this territory, except a justice's, probate, or mayor's court, to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person.

Writ in what cases issued.

SEC. 567. The writ shall be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It shall be issued upon affidavit on the application of the party beneficially interested.

Writ: alternative, or peremptory

SEC. 568. The writ shall be either alternative or peremptory; the alternative writ shall state generally the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court, at a specified time and place, why he has not done so. The peremptory writ shall be in a similar form, except that the words requiring the party to show cause why he has not done as commanded shall be omitted, and a return day shall be inserted.

Notice hearing

See sec 583

SEC. 569. When the application to the court is made without notice to the adverse party, and a writ be allowed, the alternative shall be first issued; but if the application be upon due notice, and the writ be allowed, the peremptory writ may be issued in the first instance. The notice of the application, when given, shall be at least ten days. The writ shall not be granted by default. The case shall be heard by the court, whether the adverse party appear or not.

Proceedings upon return of writ

SEC. 570. On the return of the alternative, or the day on which the application of the writ is noticed, or such further day as the court may allow, the party on whom the writ or notice shall have been served may show cause by answer, under oath, made in the same manner as an answer to a complaint in a civil action.

Answer and trial

SEC. 571. If an answer is made which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation on which the application for the writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and the verdict certified to the court. The question to be tried shall be distinctly stated in the order for trial, and the county shall be designated in which the same shall be had. The order may also direct the jury to assess any damages which the applicant may have sustained, in case they find for him.

Objection to answer

SEC. 572. On the trial the applicant shall not be precluded by the answer of any valid objection to its sufficiency, and may countervail it by proof, either in direct denial or by way of avoidance.

Motion for new trial.

SEC. 573. The motion for a new trial must be made in the court in which the issue of fact is tried.

Duty of clerk.

SEC. 574. If no notice of a motion for a new trial be given, or, if given, the motion be denied, the clerk, within five days after rendition of the verdict or denial of the motion, must transmit to the court in which the application for the writ is pending, a certified copy of the verdict attached to the order of trial; after which either party may bring on the argument of the application, upon reasonable notice to the adverse party.

Hearing.

SEC. 575. If no answer be made, the case must be heard on the papers of the applicant. If the answer raises only questions of law, or puts in issue immaterial statements not affecting the substantial rights of the parties, the court must proceed to hear, or fix a day for hearing, the argument of the case.

Judgment.

SEC. 576. If judgment be given for the applicant, he shall recover the damages which he shall have sustained, as found by the jury, or as may be determined by the court, or referees upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue, and a peremptory mandate shall also be awarded without delay.

Service of writ.

SEC. 577. The writ must be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court Service upon a majority of any of the members of any board or body is service upon the board or body, whether at the time of the service the board or body was in session or not.

Penalty for disobedience of mandate

SEC. 578. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board, or person, if it appear to the court that any member of such tribunal, corporation, board, or such person upon whom the writ has been personally served, has, without just cause, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding one thousand dollars. In case of a persistence in a refusal of obedience, the court may order the party to be imprisoned for a period not exceeding three months, and may make any orders necessary and proper for the complete enforcement of the writ.

CHAPTER III.

WRIT OF PROHIBITION.

Sec. 579. Writ defined; its use.
Sec. 580. By what authority and how issued.
Sec. 581. Writ either alternative or peremptory, form of.
Sec. 582. Provisions of preceding chapter applicable to.
Sec. 283. Writs of review, mandate and prohibition, returnable at any time.

Writ of prohibition

SEC. 579. The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board, or person, when such proceedings are without, or in excess of, the jurisdiction of such tribunal, corporation, board, or person.

Writ by what court issued.

Sec. 580. It may be issued by any court except police or justice's courts, to an inferior tribunal, or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon affidavit, on the application of the person beneficially interested.

Writ alternative or peremptory

SEC. 581. The writ must be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party to desist or refrain from further proceedings in the action or matter specified therein, until the further order of the court from which it is issued, and to show cause before such court, at a specified time and place, why such party should not be absolutely restrained from any further proceedings in such action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained, etc., must be omitted and a return day inserted.

Provisions applicable.

SEC. 582. The provisions of the preceding chapter, except of the four first sections thereof, apply to this proceeding.

Writs returnable at any time

SEC. 583. Writs of review, mandate, and prohibition, issued by the supreme court, or by the district court, may be made returnable and a hearing thereon be had at any time.

TITLE XIV.

OF CONTEMPTS AND THEIR PUNISHMENT.

Sec. 584. What shall be deemed contempts.
Sec. 585. When party dispossessed of real estate to be guilty of contempt.
Sec. 586. How punished and proceedings when contempt committed, in or out of the presence of the court.
Sec. 587. Duty of sheriff in executing warrant.
Sec. 588. When prisoner released on bail.
Sec. 589. Return of writ.
Sec. 590. Hearing of the charge.
Sec. 591. Of judgment and fine.
Sec. 592. When contempt consists of an act of omission.
Sec. 593. Proceeding if offense indictable.
Sec. 594. Proceedings if party fail to appear
Sec. 595. Illness an excuse for non-appearance
Sec. 596. Judgment shall be fine or imprisonment, and shall be conclusive and final.

Contempt of court defined.

SEC. 584. The following acts or omissions, in respect to a court of justice, or proceedings therein, are contempts of the authority of the court:

First. Disorderly, contemptuous, or insolent behavior towards the judge while holding court, tending to interrupt the due course of a trial or other judicial proceeding.

Second. A breach of peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of the trial or other judicial proceeding.

Third. Misbehavior in office or other wilful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service,

Fourth. Deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding.

Fifth. Disobedience of any lawful judgment, order, or process of the court.

Sixth. Assuming to be an officer, attorney, counsel of a court, and acting as such without authority.

Seventh. Rescuing any person or property in the custody of an officer by virtue of an order or process of such court.

Eighth. Unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial.

Ninth. Any other unlawful interference with the process or proceedings of a court.

Tenth. Disobedience of a subpœna duly served, or refusing to be sworn or answer as a witness.

Eleventh. When summoned as juror in a court, neglecting to attend or serve as such, or improperly conversing with a party to an action to be tried at such court, or with any other person, in relation to the merits of such action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court.

Twelfth. Disobedience by an inferior tribunal, magistrate, or officer, of the lawful judgment, order or process of a superior court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate, or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of such officer.

Penalty for contempt where person takes possession of real property in violation of judgment of court.

SEC. 585. Every person dispossessed or ejected from or out of any real property, by the judgment or process of any court of competent jurisdiction, and who, not having the right so to do, re-enters into or upon, or takes possession of, any such real property, or induces or procures any person not having the right so to do, or aids or abets him therein, is guilty of a contempt of the court by which such judgment was rendered, or from which such process issued. Upon a conviction of such contempt the court or justice of the peace must immediately issue an *alias* process, directed to the proper officer, and requiring him to restore the party entitled to the possession of such property, under the original judgment or process, to such possession.

Contempt; proceedings if committed in presence of court, if committed without the presence of the court

SEC. 586. When a contempt is committed in the immediate view and presence of the court or judge at chambers, it may be punished summarily, for which an order shall be made reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. When the contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit shall be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators.

When the contempt is not committed in the immediate view and presence of the court or judge, a warrant or attachment may be issued to bring the person charged to answer; or, without a previous arrest, a warrant of commitment may, upon notice or upon an order to show cause, be granted, and no warrant of commitment shall be issued without such previous attachment to answer, or such notice or order to show cause.

Whenever a warrant of attachment is issued pursuant to this chapter, the court or judge shall direct, by an endorsement on such warrant, that the person charged may be let to bail for his appearance, in an amount to be specified in such endorsement.

Arrest of the person.

SEC. 587. Upon executing the warrant of attachment the sheriff shall keep the person in custody, bring him before the court or judge, and detain him until an order may be made in the premises, unless the person arrested entitle himself to be discharged, as provided in the next section.

Bail.

SEC. 588. When a direction to let a person arrested to bail is contained in the warrant of attachment, or endorsed thereon, he shall be discharged from the arrest upon executing and delivering to the officer, at any time before return day of the warrant, a written undertaking, with two sufficient sureties, to the effect that the person arrested will appear on return of the warrant, and abide the order of the court or judge thereon, or they will pay as may be directed the sum specified in the warrant.

Return of warrant.

SEC. 589. The officer shall return the warrant of arrest and undertaking, if any, received by him from the person arrested by the return day specified therein.

Investigation of the charge.

SEC. 590. When the person arrested has been brought up or appeared, the court or judge shall proceed to investigate the charge, and shall hear any answer which the person arrested may make to the same, and may examine witnesses for or against him, for which an adjournment may be had from time to time, if necessary.

Determination and fine

SEC. 591. Upon the answer and evidence taken the court or judge shall determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he is guilty of the contempt, a fine may be imposed upon him, not exceeding five hundred dollars.

Imprisonment

SEC. 592. When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he shall have performed it, and in that case the act shall be specified in the warrant of commitment.

Indictment for same offense.

SEC. 593. Persons proceeded against according to the provisions of this chapter shall also be liable to indictment for the same misconduct, if it be an indictable offense; but the court before which a conviction is had on the indictment, in passing sentence, shall take into consideration the punishment before inflicted.

Proceedings if party fails to appear.

SEC. 594. When the warrant of arrest has been returned served, if the person arrested do not appear on return day the court or judge may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted the measure of damages in the action shall be the extent of the loss or injury sustained by the aggrieved party, by reason of the misconduct for which the warrant was issued, and the costs of the proceedings.

Inability to appear.

SEC. 595. Whenever, by the provisions of this chapter, an officer is required to keep a person, arrested on a warrant of attachment, in custody, and to bring him before a court or judge, the inability, from illness or otherwise, of the person to attend, shall be a sufficient excuse for not bringing him up; and the officer shall not confine a person arrested upon the warrant in a prison, or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance.

Judgment conclusive.

SEC. 596. The judgment and order of the court or judge, made in cases of contempt, shall be final and conclusive. The punishment shall be by fine or imprisonment, but no fine shall exceed the sum of five hundred dollars.

TITLE XV.

OF EMINENT DOMAIN.

Sec. 597. Eminent domain defined.
Sec. 598. For what public use eminent domain may be exercised.
Sec. 599. Classification of estates and rights subject to.
Sec. 600. Private property which may be taken.
Sec. 601. What must appear before private property taken.

Sec. 602. Land required for public use may be surveyed; Action for injuries from malice, etc.
Sec. 603. Where and how proceedings must be commenced.
Sec. 604. What the complaint must contain.
Sec. 605. Contents and service of summons.
Sec. 606. All persons interested may appear and defend.
Sec. 607. Power of the court.
Sec. 608. Legal testimony to be heard; what ascertained and assessed:
Sec. 609. Measure of damages.
Sec. 610. Plaintiff may institute second action to perfect title.
Sec. 611. Plaintiff must pay assessment within thirty days after judgment, and may elect to build fences and cattle guards.
Sec. 612. Payment may be made to or deposited in court for defendant; Execution may issue and court may annul proceedings
Sec. 613. Final order of condemnation.
Sec. 614. Of the possession by plaintiff.
Sec. 615. Allowance of costs under this chapter

Eminent domain defined.

SEC. 597. Eminent domain is the right of the people or government to take private property for public use. This right may be exercised in the manner provided in this title.

Eminent domain: in what cases exercised

SEC. 598. Subject to the provision of this title eminent domain may be exercised in behalf of the following public uses:

First. Public buildings and grounds for the use of the territory, and all other public uses authorized by the legistature of this territory.

Second. Public buildings and grounds for the use of any county, incorporated city, or city and county, village, town, or school districts; canals, aqueducts, flumes, ditches, or pipes for conducting water for the use of the inhabitants of any county, incorporated city, or city and county, village or town, or for draining any county, incorporated city, or city and county, village, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys, and all other public uses for the benefit of any county, incorporated city, or city and county, village, or town, or the inhabitants thereof, which may be authorized by the legislature; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes by which the same may be authorized.

Third. Wharves, docks, piers chutes, booms, ferries, bridges, toll-roads, by-roads, plank and turnpike roads, steam and horse railroads; canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines and farming neighborhoods with water, and draining and reclaiming lands, and for floating lumber and logs on streams not navigable.

Fourth. Roads, tunnels, ditches, flumes, pipes, and dumping places for working mines; also, outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines; also, an occupancy in common by the owners or possessors of the different mines of any place for the flow, deposit, or conduct of the tailings, or refuse matter from their several mines.

Fifth. By-roads leading to residences and farms.

Sixth. Telegraph lines.

Seventh. Sewerage of an incorporated city, or city and county, or of any village or town, whether incorporated or unincorporated, or of any settlement consisting of not less than ten families, or of any public buildings belonging to the state, or to any college or university.

Emment domain; classification

SEC. 599. The following is a classification of the estates and rights to land subject to be taken for public use:

First. A fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams and permanent flooding occasioned thereby, or for an outlet for a flow, or a place for the deposit of *debris* or tailings of a mine.

Second. An easement when taken for any other use.

Third. The right of entry upon, occupation of, lands and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use.

Eminent domain; what property may be taken

SEC. 600. The private property which may be taken under this title includes—

First. All real property belonging to any person.

Second. Property appropriated to public use; but such property shall not be taken unless for a more necessary public use than that to which it has been already appropriated.

Third. Franchises for toll-roads, toll-bridges, and ferries, and all other franchises; but such franchises shall not be taken unless for free highways, railroads, or other more necessary use.

Fourth. All rights of way for any and all the purposes mentioned in section 598, and any and all structures and improvements thereon, and the lands held or used in connection therewith, shall be subject to be connected with, crossed or intersected by, any other right of way or improvements, or structures thereon. They shall also be subject to a limited use, in common with the owner thereof, when necessary; but such uses, crossings, intersections, and connections shall be made in manner most compatible with the greatest public benefit and least private injury.

Fifth. All classes of private property not enumerated may be taken for public use, when such taking is authorized by law.

Eminent domain: what must appear

SEC. 601. Before property can be taken it must appear—

First. That the use to which it is to be applied is a use authorized by law.

Second. That the taking is necessary to such use.

Third. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use.

Survey, location and map.

SEC. 602. In all cases where land is required for public use, the territory, or its agents in charge of such use, may survey and locate the same; but it must be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of section 607. The territory, or its agents in charge of such public use, may enter upon the land and make examination, surveys, and maps thereof, and such entry shall constitute no cause of action in favor of the owners of the land, except for injuries resulting from negligence, wantonness, or malice.

Proceedings: how instituted

SEC. 603. All proceedings under this title must be brought in the district court for the county in which the property is situated. They must be commenced by filing a complaint and issuing a summons thereon.

SEC. 604. The complaint must contain—

Complaint.

First. The name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiffs.

Second. The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.

Third. A statement of the right of the plaintiff.

Fourth. If a right of way be sought, the complaint must show the location, general route, and termini, and must be accompanied by surveys and maps thereof.

Fifth. A description of each piece of land sought to be taken, and whether the same includes a whole or only a part of an entire parcel or tract.

Sixth. All parcels lying in the county, and required for the same public use, may be included in the same or separate proceedings, at the option of the plaintiff; but the court may consolidate or separate them, to suit the convenience of parties. When application for the condemnation of a right of way for the purpose of sewerage is made on behalf of a settlement, or of an incorporated village or town, the probate judge alone must be named as plaintiff.

Summons.

SEC. 605. The clerk must issue a summons which must contain the names of the parties, a description of the lands proposed to be taken, a statement of the public use for which it is sought, and a notice to the defendants to appear before the court or some judge thereof at chambers, at a time and place therein specified, and show cause why the property described should not be condemned as prayed for in the complaint. Such summons shall, in other particulars, be in form of a summons in a civil action, and shall be served in like manner upon each defendant named therein at least ten (10) days previous to the time designated in such notice, for the showing of cause before such court or judge at chambers. But, the failure to make such service upon any defendant shall not affect the right to proceed against any or all other of such defendants, upon whom service of such summons shall have been properly made.

NOTE —Section 605, from act of March 10th, 1887

All persons interested may appear.

SEC. 606. All persons in occupation of, or having or claiming an interest in, any of the property described in the complaint, or in the damages for the taking thereof, though not named, may appear, plead and defend, each in respect to his property or interest, or that claimed by him, in like manner as if named in the complaint.

Power of court or judge.

SEC. 607. The court or any judge thereof at chambers shall have power:

First. To regulate and determine the place and manner of making the connections and crossings, and enjoying the common uses mentioned in the fourth sub-division of section 600 of this title, and of the occupying of canyons, passes and defiles, for railroad purposes, as permitted and regulated by the laws of this territory, or of the United States.

Second. To determine whether or not the use for which the property is sought to be appropriated, is a public use within the meaning of the laws of this territory, and of the United States.

Third. To limit the amount of property sought to be appropriated, if in the opinion of such court or judge, the appropriation of the entire quantity sought to be appropriated would be detrimental to the public interest and welfare, or is not necessary for the proper prosecution of the enterprise for which the same is sought to be appropriated.

Fourth. In case such court or judge shall be satisfied that the public interests require the prosecution of such enterprise, and that the lands or real estate proposed to be taken are required and necessary for the purposes of such enterprise, to make an order appointing three (3) competent disinterested persons, resident in said county, commissioners to ascertain and determine the amount to be paid by the plaintiff to each owner or other person interested in such property, as compensation for his, her, or their damages, by reason of the appropriation of such property, and specify the time and place of the first meeting of such commissioners, and fixing their compensation.

NOTE—Section 607 from act of March 10th. 1887.

Duty of commissioners

SEC. 608. The commissioners mentioned in the last preceding section, shall, before entering upon their duties, severally take and subscribe an oath before some person qualified to administer oaths, faithfully and impartially to discharge the duties of their appointment. The said commissioners shall meet at the time and place mentioned in the order appointing them, and proceed to examine the lands sought to be appropriated, and shall hear the allegations and evidence of all persons interested in each of the several parcels of land, and shall ascertain and assess:

First. The value of the property sought to be appropriated, and all improvements thereon, pertaining to the realty, and of each and every separate estate and interest therein; if it consist of different parcels the value of each persón [parcel] and each estate or interest therein shall be separately assessed.

Second. If the property sought to be appropriated constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by the plaintiff.

Third. Separately, how much the portion not sought to be condemned and each estate or interest therein, will be benefitted, if at all, by the construction of the improvements proposed by the plaintiff, and if the benefit shall be equal to the damage assessed under sub-division two (2), the owner of the parcel shall be allowed no compensation except the value of the portion taken; but, if the benefits shall be less than the damages assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value.

Fourth. As far as practicable compensation must be assessed for each source of damage separately.

Within three (3) months after completing their said examination, and the making of said appraisement and assessment of damages, the said commissioners shall file a full report of their doings in the premises, accompanied by a map showing the route and location of the proposed railroad or other public work or improvement, in the office of the clerk of the court, in the county where the said proceeding is pending, and shall notify the parties interested in such report, that the same is made and filed, such notice shall be served upon the respective parties, in the same manner as summons in civil actions. Appeals from the assessments made by the commissioners, may be taken and prosecuted in the court where the report of said commissioners is filed, by any party interested. Such appeal must be taken within the period of thirty (30) days after the service upon appellant of the notice of the filing of the award by the service of notice of such appeal upon the plaintiff in such proceeding, and the same shall be brought on for trial upon the same notice and in the same manner as other civil actions, and unless a jury shall be waived by the consent of all parties to such appeal, the same shall be tried by jury, and the damages to which the appellant may be entitled by reason of the appropriation of his property, shall be re-assured (re-assessed) upon the same principles as hereinbefore prescribed, for the assessment of such damages by commissioners; upon any verdict or assessment by commissioners becoming final, judgment shall be entered declaring that upon payment of such verdict or assessment, together with the interest and costs allowed by law, if any, the right to construct and maintain such railroad or other public work or improvement, and to take, use and appropriate the property described in such verdict or assessment, for the use and purposes for which said land has been condemned, shall as against the parties interested in such verdict or assessment, be and remain in the plaintiff, and his or its heirs, successors or assigns, forever. In case the party appealing from the award of commissioners in any proceeding as aforesaid, shall not succeed in increasing the amount of damages finally awarded to him, in such proceeding, he shall not recover the costs of such appeal; but all the costs of the appellee upon such appeal shall be taxed against and recovered from the appellant.

NOTE—*Section 608 from act of March 10, 1887*

Right accrues at date of summons.

SEC. 609. For the purpose of assessing compensation and damages, the right thereto shall be deemed to have accrued at the date of the summons, and its actual value at that date shall be the measure of compensation for all property to be actually taken, and the basis of damages to property not actually taken, but injuriously affected, in all cases where such damages are allowed as provided in section 607.

Damages to draw interest

If an order be made letting the plaintiff into possession, as provided in section 613, the compensation and damages awarded shall draw lawful interest from the date of such order. No improvements put upon the property subsequent to the date of the service of summons shall be included in the assessment of compensation or damages.

In case of defective title.

SEC. 610. If the title attempted to be acquired is found to be defective from any cause, the plaintiff may again institute proceedings to acquire the same, as in this title prescribed.

Payment by plaintiff: bond.

SEC. 611. The plaintiff must, within thirty days after final judgment, pay the sum of money assessed; but may, at the time of or before payment, elect to build the fences and cattle guards, and if he so elect, shall execute to the defendant a bond, with sureties to be approved by the court, in double the assessed costs of the same, to build such fences and cattle guards within eighteen months from the time the railroad is built on the land taken, and if such bond be given, need not pay the costs of such fences and cattle guards. In an action on such bond the plaintiff may recover reasonable attorney's fees.

Payment how made

SEC. 612. Payment may be made to the defendants entitled thereto, or the money may be deposited in court for the defendants, and be distributed to those entitled thereto. If the money be not so paid or deposited the defendants may have execution, as in civil cases, and if the money cannot be made on execution, the court, upon a showing to that effect, must set aside and annul the entire proceedings and restore possession of the property to the defendant, if possession has been taken by the plaintiff.

Order of condemnation

SEC. 613. When payments have been made and the bond given, if the plaintiff elects to give one, as required by the last two sections, the court must make a final order of condemnation, which must describe the property condemned and the purpose of such condemnation. A copy of the order must be filed in the office of the recorder of the county, and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified.

Possession during pendency of action

SEC. 614. At any time after service of summons, the court or any judge thereof at chambers, may authorize the plaintiff, if already in possession, to continue therein, and if not, then to take possession of, and use the property during the pendency, and until the final conclusion of such proceedings, and may stay all actions and proceedings against the plaintiff on account thereof; but the plaintiff must give security, to be approved by such court or judge. To pay as well the compensation in that behalf when ascertained, as all damages which may be sustained by the defendant, if for any cause the property shall not be finally taken for public uses.

NOTE.—Section 614 from act of March 10, 1887

Costs.

SEC. 615. Costs may be allowed or not, and if allowed, may be apportioned between the parties on the same or adverse sides, in the discretion of the court.

TITLE XVI.—CHAPTER I.

GENERAL PRINCIPLES OF EVIDENCE.

Sec. 616. When evidence of one witness sufficient.
Sec. 617. What witness can testify to.
Sec. 618. How and in whose presence a witness heard.
Sec. 619. How presumption of truth may be repelled.
Sec. 620. Rights of a party not prejudiced by declarations, etc., of another.

Sec. 621. Declarations, etc., of grantor of real estate evidence against grantee.

Sec. 622. When declaration, etc., forms part of transaction.

Sec. 623. When question in dispute is obligation of a third person.

Sec. 624. Evidence in questions of pedigree.

Sec. 625. Evidence against successor in interest.

Sec. 626. When a part of an act, declaration, etc., has been inquired into, the whole may be.

Sec. 627. Evidence of the contents of a writing.

Sec. 628. Contents of a written agreement the only evidence of its terms, except in certain cases.

Sec. 629. Interpretation of language of a writing.

Sec. 630. Office of a judge in construing a statute or instrument.

Sec. 631. Intention of the legislature; particular and general provision and intent.

Sec. 632. Circumstances under which instrument made may be shown.

Sec. 633. Presumption as to terms of writing.

Sec. 634. When writing controls printing.

Sec. 635. Evidence of experts.

Sec. 636. As to the intentions of parties to an agreement.

Sec. 637. A writing is to be construed according to the ordinary acceptation of its terms.

Sec. 638. Interpretation in favor of natural right to prevail.

Sec. 639. Only material allegations may be proved.

Sec. 640. Evidence must correspond to material allegations; what inquired of collaterally.

Sec. 641. Affirmative allegations must be proven; when negative may be.

Sec. 642. What facts may be given in evidence on trial.

Sec. 643. Of what facts courts take judicial notice.

Sec. 644. How a writing which appears to have been altered may be admitted in evidence.

Sec. 645. How a judicial record of the United States, or of this territory may be proven.

Sec. 646. Laws of the States and territories, printed by authority, admitted in evidence.

SEC. 616. The direct evidence of one witness, who is entitled to full credit, is sufficient for proof of any fact, except perjury and treason.

Sufficiency of evidence.

SEC. 617. A witness can testify of those facts only which he knows of his own knowledge—that is, which are derived from his own perceptions—except in those few express cases in which his opinions, or inferences, or the declarations of others are admissable.

To what witnesses may testify

SEC. 618. A witness can be heard only upon oath or affirmation, and upon a trial he can be heard only in the presence, and subject to the examination, of all the parties, if they choose to attend and examine.

Examination of witness.

SEC. 619. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies, by the character of his testimony, or by evidence affecting his character for truth, honesty, or integrity, or his motives, or by contradictory evidence, and the jury are the exclusive judges of his credibility.

Credibility of witness

SEC. 620. The rights of a party cannot be prejudiced by the declaration, act, or omission of another, except by virtue of a particular relation between them; therefore, proceedings against one cannot affect another.

Rights. by what not affected

SEC. 621. Where, however, one derives title to real property from another, the declaration, act, or omission of the latter while holding the title in relation to the property, is evidence against the former.

Declaration of grantor.

SEC. 622. Where, also, the declaration, act, or omission forms part of a transaction, which is itself the fact in dispute, or evidence of that fact, such declaration, act or omission is evidence as part of the transaction.

Declaration: if it is fact in dispute

SEC. 623. And where the question in dispute between the parties is the obligation or duty of a third person, whatever would be the evidence for or against such person, is *prima facie* evidence between the parties.

Evidence as to duty

SEC. 624. The declaration, act, or omission of a member of a family, who is a decedent, or out of the jurisdiction, is also admissable as evidence of common reputation, in cases where, on questions of pedigree, such reputation is admissable.

Declaration as to pedigree.

Declaration of decedent against interest.

SEC. 625. The declaration, act, or omission of a decedent, having sufficient knowledge of the subject, against his pecuniary interest, is also admissable as evidence to that extent against his successor in interest.

What evidence may be given in certain cases.

SEC. 626. When part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by the other; when a letter is read, the answer may be given; and when a detached act, declaration, conversation, or writing is given in evidence, any other act, declaration, conversation, or writing which is necessary to make it understood, may also be given in evidence.

Evidence: primary and secondary.

SEC. 627. There can be no evidence of the contents of a writing, other than the writing itself, except in the following cases:

First. When the original has been lost or destroyed, in which case proof of the losses or destruction must first be made.

Second. When the original is in the possession of the party against whom the evidence is offered, and he fails to produce it after a reasonable notice.

Third. When the original is a record or other document in the custody of a public officer.

Fourth. When the original has been recorded and a certified copy of the record is made evidence by this code or other statute.

Fifth. When the original consists of numerous accounts or other documents which cannot be examined in court, without great loss of time, and the evidence sought from them is only the general result of the whole.

In the cases mentioned in sub-divisions three and four, a copy of the original, or of the record, must be produced; in those mentioned in sub-divisions one and two, either a copy or oral evidence of the contents.

Evidence as to written agreement

SEC. 628. When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and, therefore, there can be between the parties and their representatives or successors in interest no evidence of the terms of the agreement other than the contents of the writing, except in the following cases:

First. Where a mistake or imperfection of the writing is put in issue by the pleadings.

Second. Where the validity of the agreement is the fact in dispute.

But this section does not exclude other evidence of the circumstances under which the agreement was made, or to which it relates, as defined in section 632; or to explain an extrinsic ambiguity, or to establish illegality or fraud. The term agreement includes deeds and wills, as well as contracts between parties.

Interpretation of language

SEC. 629. The language of a writing is to be interpreted according to the meaning it bears in the place of its execution, unless the parties have reference to a different place.

Office of the judge in construction.

SEC. 630. In the construction of a statute or instrument the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein—not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will as give effect to all.

Intention to be ascertained.

SEC. 631. In the construction of a statute, the intention of the legislature, and, in the construction of the instrument, the intention of the parties is to be pursued, if possible; and when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it.

Evidence of circumstances

SEC. 632. For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject of the instrument and of the parties to it, may also be shown, so that the judge be placed in the position of those whose language he is to interpret.

Construction of terms of instrument.

SEC. 633. The terms of a writing are presumed to have been used in their primary and general acceptation, but evidence is, nevertheless, admissable that they have a local, technical, or otherwise peculiar signification, and were so used and understood in the particular instance. in which case the agreement must be construed accordingly.

Written words control printed form

SEC. 634. When an instrument consists partly of written words and partly of a printed form, and the two are inconsistent, the former controls the latter.

Characters may be deciphered by experts.

SEC. 635. When the characters in which an instrument is written are difficult to be deciphered, or the language of the instrument is not understood by the court, the evidence of persons skilled in deciphering the characters, or who understand the language, is admissable to declare the characters or the meaning of of the language.

Construction in certain cases.

SEC. 636. When the terms of an agreement have been intended in a different sense by the different parties to it, that sense is to prevail against either party in which he supposed the other understood it; and when different constructions of a provision are otherwise equally proper, that is to be taken which is most favorable to the party in whose favor the provision was made.

Construction of writing.

SEC. 637. A written notice, as well as every other writing, is to be construed according to the ordinary acceptation of its terms. Thus, a notice to the drawers or endorsers of a bill of exchange or promissory note that it has been protested for want of acceptance or payment, must be held to import that the same has been duly presented for acceptance or payment, and the same refused, and that the holder looks for payment to the person to whom the notice is given.

Construction to be in favor of natural right.

SEC. 638. When a statute or instrument is equally susceptible of two interpretations, one in favor of natural right, and the other against it, the former is to be adopted.

What must be proved

SEC. 639. None but a material allegation need be adopted.

Evidence to correspond with allegation.

SEC. 640. Evidence must correspond with the substance of the material allegations, and be relevant to the question in dispute. Collateral questions must therefore be avoided. It is, however, within the discretion of the court to permit inquiry into a collateral fact when such fact is directly connected with the question in dispute, and is essential to its proper determination, or when it affects the credibility of a witness

Proof of affirmative and negative allegation.

SEC. 641. Each party must prove his own affirmative allegations. Evidence need not be given in support of a negative allegation, except when such negative allegation is an essential part of the statement of the right or title on which the cause of action or defense is founded; not even in such case when the allegation is a denial of the existence of a document, the custody of which belongs to the opposite party.

Evidence: as to what facts given.

SEC. 642. In conformity with the preceeding provisions, evidences may be given upon a trial of the following facts:

First. The precise fact in dispute.

Second. The act, declaration or omission of a party as evidence against such party.

Third. An act or declaration of another, in the presence and within the observation of a party, and his conduct in relation thereto.

Fourth: The act or declaration, verbal or written, of a deceased person in respect to the relationship, birth, marriage, or death of any person related by blood or marriage to such deceased person; the act or declaration of a deceased person done or made against his interest in respect to his real property; and also in criminal actions the act or declaration of a dying person, made under a sense of impending death, respecting the cause of his death.

Fifth. After proof of a partnership or agency, the act or declaration of a partner or agent of the party, within the scope of the partnership or agency, and during its existence. The same rule applies to the act or declaration of a joint owner, joint debtor, or other person jointly interested with the party.

Sixth. After proof of a conspiracy, the act or declaration of a conspirator against his co-conspirator, and relating to the conspiracy.

Seventh. The act, declaration, or omission forming part of a transaction as explained in section 622.

Eighth. The testimony of a witness deceased, or out of the jurisdiction, or unable to testify, given in a former action between the same parties, relating to the same matter.

Ninth. The opinion of a witness respecting the identity or handwriting of a person when he has knowledge of the person or handwriting; his opinion on a question of science, art, or trade, when he is skilled therein.

Tenth. The opinion of a subscribing witness to a writing, the validity of which is in dispute, respecting the mental sanity of the signer, and the opinion of an intimate acquaintance respecting the mental sanity of a person, the reason of the opinion being given.

Eleventh. Common reputation existing previous to the controversy respecting facts of a general or public interest more than thirty years old, and in cases of pedigree and boundary.

Twelfth. Usage, to explain the true character of an act, contract, or instrument, where such true character is not otherwise plain; but usage is never admisable except as an instrument of interpretation.

Thirteenth. Monuments and inscriptions in public places as evidence of common reputation; and entries in family bibles or other family books or charts, engravings on rings, family portraits, and the like, as evidence of pedigree.

Fourteenth. The contents of a writing, when oral evidence thereof is admissible.

Fifteenth. Any facts from which the facts in issue are presumed, or are logically inferable.

Sixteenth. Such facts as served to show the credibility of a witness, as explained in section 619.

Judicial notice.

SEC. 643. Courts take judicial notice of the following facts:

First. The true signification of all English words and phrases, and all legal expressions.

Second. Whatever is established by law.

Third. Public and private official acts of the legislative, executive, and judicial departments of this territory, and of the United States.

Fourth. The seals of all the courts of this territory, and of the United States.

Fifth. The accession to office, and the official signatures and seals of office, of the principal officers of government in the legislative, executive, and judicial departments of this territory and the United States.

Sixth. The existence, title, national flag, and seal of every state or sovereign recognized by the executive power of the United States.

Seventh. The seals of courts of admiralty and maritime jurisdiction, and of notaries public.

Eighth. The laws of nature, the measure of time, and the geographical divisions and political history of the world.

In all the cases the court may resort, for its aid, to appropriate books or documents of reference.

12th ses. p. 12

Change in writing to be accounted for.

SEC. 644. The party producing a writing as genuine, which has been altered, or appears to have been altered, after its execution in a part material to the question in dispute, and such alteration is not noted on the writing, shall account for the appearance or alteration. He may show that the alteration was made by another without his concurrence, or was made with the consent of the parties affected by it, or was otherwise properly or innocently made. If he do that, he may give the writing in evidence, but not otherwise.

12th ses. p. 12

Judicial record; how proved.

SEC. 645. A judicial record of this territory, or of the United States, may be proved by the production of the original, or a copy thereof, certified by the clerk or other person having the legal custody thereof, under the seal of the court, to be a true copy of such record.

12th ses p 12

Statute; how proved

SEC. 646. Printed copies, in volumes, of statutes, codes, or other written law of any other territory or state, purporting or proven to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law in the courts and judicial tribunals of such state or territory, shall be admitted by courts and officers of this territory as presumptive evidence of such law.

NOTE.—Sections 644, 645, and 646 from act of Feb. 23, 1881.

CHAPTER II.

WITNESSES.

Sec. 647. Who may be witnesses.
Sec. 648. When persons not allowed to testify under provisions of last section.
Sec. 649. Persons disqualified as witnesses.
Sec. 650. What persons holding confidential relations cannot testify.
Sec. 651. Official communications.
Sec. 652. Judge or juror may be called as witness.
Sec. 653. Interpreter; how summoned, sworn, or punished for contempt, and his compensation.

Qualifications of witnesses.

SEC. 647. All persons, without exception otherwise than is specified in the next two sections, who, having organs of sense, can perceive, and, perceiving, can make known their perceptions to others, may be witnesses. Therefore, neither parties nor other persons who have an interest in the event of an action or proceeding are excluded, nor those who have been convicted of crime, nor persons on account of their opinions on matters of religious belief; although in every case the credibility of the witnesses may be drawn in question, as provided in section 619.

Who may not testify where is representative of deceased person

SEC. 648. No person shall be allowed to testify, under provision of the last section, where the adverse party, or the party for whose immediate benefit the action or proceeding is prosecuted or defended, is the representative of a deceased person, when the facts to be proved transpired before the death of such deceased person; and nothing in said section shall affect the laws in relation to attestation of any instrument required to be attested; nor shall anything contained in said section render any person, who, in a criminal proceeding, is charged with the commission of any public offense, competent or compellable to give evidence therein for or against himself.

Persons ineligible as witnesses

SEC. 649. The following persons shall not be witnesses:

First. Those who are of unsound mind at the time of their production for examination.

Second. Children under ten years of age, who, in the opinion of the court, appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly.

Third. Persons against whom judgment has been rendered upon a conviction for a felony, unless pardoned by the governor, or such judgment has been reversed on appeal.

Privileged communications

SEC. 650. There are particular relations in which it is the policy of the law to encourage confidence, and to preserve it inviolate; therefore a person cannot be examined as a witness in the following cases:

First. A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage: but this exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other.

Second. An attorney or counselor shall not, without the consent of his client, be examined as a witness as to any communication made by the client to him, or his advice given thereon, in the course of professional employment.

Third. A clergyman or priest shall not, without the consent of the person making the confession, be examined as a witness as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

Fourth. A licensed physician or surgeon cannot, without the consent of his patient, be examined in a civil action, as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient.

Official communications.

SEC. 651. A public officer shall not be examined as a witness as to communications made to him in official confidence, when the public interest would suffer by the disclosure.

Judge or juror may be witness

SEC. 652. The judge, himself, or any juror, may be called as a witness by either party; but in such case it shall be in the discretion of the court or judge to order the trial to be postponed or suspended, and to take place before another judge or jury.

Interpreter

SEC. 653. When a witness does not understand and speak the English language, an interpreter shall be sworn to interpret for him. Any person, a resident of the proper county, may be summoned by any court or judge to appear before such court or judge, to act as interpreter in any action or proceeding. The summons shall be served and returned in like manner as a subpœna. Any person so summoned shall, for a failure to attend at the time and place named in the summons, be deemed guilty of a contempt, and may be punished accordingly. A person summoned as an interpreter *shall* receive such compensation as the court in its discretion may order, in addition to the fees allowed by law.

CHAPTER III.

MEANS OF PRODUCTION.

Sec. 654. Of the subpœna.
Sec. 655. How subpœna issued and what to require.
Sec. 656. Service of subpœna.
Sec. 657. Service on concealed witness.
Sec. 658. Person in court may be compelled to testify.
Sec. 659. Subpœna duces tecum.
Sec. 660. What questions witness must answer.
Sec. 661. Refusal to be sworn or answer is contempt.
Sec. 662. Punishment for disobeying subpœna.
Sec. 663. Court may issue warrant for defaulting witness.
Sec. 664. What shall be stated in warrant for commitment: how warrant of arrest directed and executed.
Sec. 665. Order for examination of a prisoner.
Sec. 666. Only made on affidavit.
Sec. 667. When witness may be produced if imprisoned.

Attendance of witnesses.

SEC. 654. A subpœna may require not only the attendance of the person to whom it is directed at a particular time and place, to testify as a witness, but may also require him to bring any books, documents, or other things under his control, to be used as evidence. No person shall be required to attend as a witness before any court, judge, or justice, or any other officer out of the county in which he resides, unless the distance be less than thirty miles from his place of residence to the place of trial.

The subpœna.

SEC. 655. The subpœna shall be issued as follows

First. To require attendance before the court, or at the trial of an issue therein, it shall be issued and under the seal of the court before which the attendance is required, or in which the issue is pending.

Second. To require attendance out of the court before a judge or justice, or other officer authorized to administer oaths or take testimony in any matter under the laws of this territory, it shall be issued by the judge, justice, or any other officer before whom the attendance is required.

Third. To require attendance before a commissioner appointed to take testimony by a court of a foreign country or of the United States, or of any other state in the United States of America, or any other district or county within the territory, or before any officer or officers empowered by the laws of the United States to take testimony, it may be issued by any judge or justice of the peace in places within their respective jurisdiction, with like power to enforce attendance, and upon certificate of contumacy to said court to punish contempt of their process, as such judge or justice could exercise if the subpœna directed the attendance of the witness before their courts in a matter pending therein.

Service of subpœna.

SEC. 656. The service of a subpœna shall be made by showing the original, and delivering a copy or a ticket containing its substance to the witness personally, giving or offering to him at the same time, if demanded by him, the fees to which he is entitled for travel to and from the place designated, and one day's attendance there. Such service may be made by any person.

Service upon concealed witness.

SEC. 657. If a witness be concealed in a building or vessel so as to prevent the service of a subpœna upon him, any court or judge, or any officer issuing the subpœna, may, upon proof by affidavit, of the concealment and of the materiality of the witness, make an order that the sheriff of the county serve the subpœna, and the sheriff shall serve it accordingly; and for that purpose may break into the building or vessel where the witness is concealed.

Witness in court.

SEC. 658. A person present in court or before a judicial officer may be required to testify in the same manner as if he were in attendance upon a subpœna issued by such court or officer.

Duty of witness to attend.

SEC. 659. It shall be the duty of a witness duly served with a subpœna to attend at the time appointed with any papers under his control required by the subpœna, to answer all pertinent and legal questions, and, unless sooner discharged, to remain until the testimony is closed.

Duty and privilege of witness.

SEC 660. A witness shall answer questions, legal and pertinent to the matter in issue, though his answer may establish a claim against himself; but he need not give an answer which will have a tendency to subject him to punishment for felony; nor need he give an answer that will have a direct tendency to degrade his character, unless it be the very fact in issue, or to a fact from which the fact in issue would be presumed. But a witness shall answer as to the fact of his previous conviction for felony.

Punishment for disobedience

SEC. 661. Disobedience to a subpœna, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit, or deposition, when required, may be punished as a contempt by the court or officer issuing the subpœna, or requiring the witness to be sworn; and, if the witness be a party, his complaint may be dismissed or his answer stricken out.

Further liability of disobedient witness

SEC. 662. A witness disobeying a subpœna shall also forfeit to the party aggrieved the sum of one hundred dollars, and all damages which he may sustain by the failure of the witness to attend; which forfeiture and damages may be recovered in a civil action.

Warrant for arrest of witness

SEC. 663. In case of failure of a witness to attend, the court or officer issuing the subpœna, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to the sheriff of the county to arrest the witness, and bring him before the court or officer where his attendance was required.

Warrant: what it shall specify and to whom directed

SEC. 664. Every warrant of commitment issued by a court or officer pursuant to this chapter, must specify therein particularly the cause of the commitment, and, if it be for refusing to answer a question, such question must be stated in the warrant. And every warrant to arrest, or commit, a witness pursuant to this chapter, must be directed to the sheriff of the county where the witness may be, and must be executed by him in the same manner as process issued by the district court.

Examination of witness confined in prison.

SEC. 665. If the witness be a prisoner confined in a jail or prison within this territory for any other cause than a sentence for felony, an order for his examination in the prison, upon deposition, or for his temporary removal and production before a court, or officer, for the purpose of being orally examined, may be made as follows.

First. By the court itself, in which the action or special proceeding is pending.

Second. By a judge of the supreme court, district court, or probate judge of the county where the action or proceeding is pending, if before a judge or other person out of court.

Order made on affidavit

SEC. 666. Such order can only be made on affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

Testimony of prisoner; how taken.

SEC. 667. If the witness be imprisoned in the county where the action or proceeding is pending, for a cause other than felony, his production may be required. In all other cases, his examination, when allowed, shall be taken upon deposition.

CHAPTER IV.

OF THE EXAMINATION OF PARTIES TO AN ACTION OR PROCEEDING, AND OF PERSONS FOR WHOSE IMMEDIATE BENEFIT SUCH ACTION OR PROCEEDING IS PROSECUTED OR DEFENDED.

Sec. 668. Action to obtain discovery under oath prohibited.
Sec. 669. Adverse party compelled to testify.
Sec. 670. May be rebutted by adverse testimony.
Sec. 671. Remedy in case adverse party refuse to testify.

Action for discovery.

SEC. 668. No action to obtain a discovery under oath, in aid of the prosecution or defense of another action or proceeding shall be allowed, nor shall any examination of a party be had on behalf of the adverse party, except in the manner provided by this and the foregoing chapter.

Who may be examined.

SEC. 669. A party to an action or proceeding may be examined as a witness at the instance of the adverse party, or of any one of several adverse parties, and for that purpose may be compelled in the same manner, and subject to the same rules of examination, as any other witness, to testify at the trial, and he may be examined on a commission.

Rebuttal.

SEC. 670. The examination of a party thus taken may be rebutted by adverse testimony.

Sec. 671. If an adverse party refuse to attend or testify at the trial, or to give his deposition before trial, or upon a commission when required, his complaint or answer may be stricken out, and judgment be taken against him; and he may be also, in the discretion of the court, proceeded against as in other cases for contempt.

Punishment of party refusing to attend or testify.

CHAPTER V.

ON AFFIDAVIT.

Sec. 672. Before whom taken in this territory.
Sec. 673. Before whom taken out of the territory.
Sec. 674. Before whom taken in foreign country.
Sec. 675. When taken in another state or foreign country, how tested.
Sec. 676. Where filed; to be prima facie evidence.
Sec. 677. Evidence of publication, how furnished.

Sec. 672. An affidavit, to be used before any court, judge, or officer of this territory, may be taken before any judge or clerk of any court, or any justice of the peace or notary public in this territory.

Affidavit: before whom taken in Montana.

Sec. 673. An affidavit taken in another territory, or any state of the United States, to be used in this territory, shall be taken before a commissioner appointed by the governor of this territory to take affidavits and depositions, in such other territory or state, or before any notary public or judge of a court of record having a seal.

Affidavit: before whom taken in other jurisdiction.

Sec. 674. An affidavit taken in a foreign country, to be used in this territory, shall be taken before an ambassador, minister or consul of the United States, or before any judge of a court of record, having a seal, in such foreign country.

Affidavit: before whom taken in foreign country.

Sec. 675. When an affidavit is taken before a judge of a court in another state, or in a foreign country, the genuineness of the signature of the judge, the existence of the court, and the fact that such judge is a member thereof, shall be certified by the clerk of the court under the seal thereof.

Affidavit: certificate if taken before judge.

Sec. 676. If such affidavit be made in an action or special proceeding pending in a court, it may be filed with the court or the clerk thereof. If not so made, it may be filed with the clerk of the county where the newspaper is printed. In either case the original affidavit, or a copy thereof, certified by the judge of the court or clerk having it in custody, is *prima facie* evidence of the fact stated therein.

Affidavit: where filed

12th ses p. 12

Proof of publication.

SEC. 677. Evidence of the publication of a document or notice required by law, or by an order of a court or judge, to be published in a newspaper, may be given by the affidavit of the printer of a newspaper or his foreman, or principal clerk, annexed to a copy of the document or notice, specifying the time when, and the papers in which the publication was made.

NOTE—Section 677 from act of Feb. 23rd, 1881.

CHAPTER VI.

OF DEPOSITIONS TAKEN IN THIS TERRITORY.

Sec. 678. In what cases depositions may be taken.
Sec. 679. Notice to take depositions.
Sec. 680. Manner of taking and returning depositions.
Sec. 681. May be read in any stage of proceedings by either party.

Deposition: how taken in this territory.

SEC. 678. The testimony of a witness in this territory may be taken by deposition in an action at any time after the service of the summons, or the appearance of the defendant; and in a special proceeding after a question of fact has arisen therein, in the following cases:

First. When the witness is a party to the action or proceeding, or a person for whose immediate benefit the action or proceeding is prosecuted or defended.

Second. When the witness resides out of the county in which his testimony is to be used.

Third. When the witness is about to leave the county where the action is to be tried, and will probably continue absent when the testimony is required.

Fourth. When the witness, otherwise liable to attend the trial, is nevertheless too infirm to attend.

Notice

SEC. 679. Either party may have the deposition taken of a witness in this territory, before any judge or clerk, or any justice of the peace, or notary public, in this territory, on serving on the adverse party previous notice of the time and place of examination, together with a copy of an affidavit showing that the case is one mentioned in the last section. At any time during the forty days immediately after the service of summons by publication has been completed, and at any time thereafter, when the defendant has not appeared, the notice required by this section may be served on the clerk of the court where the action is pending; such notice shall be at least five days, and in addition one day for every twenty-five miles of the distance of the place of examination from the residence of the person to whom the notice is given, unless, for a cause shown, a judge by order prescribe a shorter time. When a shorter time is prescribed, a copy of the order shall be served with the notice.

Examination.

SEC. 680. Either party may attend such examination, and put such questions—direct and cross—as may be proper. The deposition, when completed, shall be carefully read to the witness, and corrected by him in any particular if desired; it shall then be subscribed by the witness, certified by the judge or officer taking the deposition, enclosed in an envelope or wrapper, sealed and directed to the clerk of the court in which the action is pending, or to such person as the parties in writing may agree upon, and either delivered by the judge or officer to the clerk, or such person, or transmitted through the mail, or by some safe private opportunity; and thereupon such deposition may be used by either party upon the trial or other proceeding against any party giving or receiving the notice, subject to all legal exceptions. But if the parties attend at the examination no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the time of the examination. If the deposition be taken by reason of the absence or intended absence from the county of the witness, or because he is too infirm to attend, proof, by affidavit, or oral testimony, shall be made at the trial that the witness continues absent or infirm, to the best of the deponent's knowledge or belief. The deposition thus taken may also be read in case of the death of the witness.

Deposition may be read in evidence.

SEC. 681. When a deposition has once been taken it may be read in any stage of the same action or proceeding by either party, and shall then be deemed evidence of the party reading it.

CHAPTER VII.

OF DEPOSITIONS TAKEN OUT OF THIS TERRITORY.

Sec. 682. When deposition may be taken.
Sec. 683. How deposition of non-resident witness taken.
Sec. 684. May be read in evidence.
Sec. 685. May be read by either party.

Deposition: how taken out of this territory.

SEC. 682. The testimony of a witness out of the territory may be taken by deposition in an action, at any time after the service of the summons, or the appearance of the defendant; and in a special proceeding at any time after a question of fact has arisen therein.

13th ses p. 49

Notice and copy of interrogatories to be served; commission.

SEC. 683. When the testimony of any non-resident witness or witnesses shall be necessary in any civil action pending in any court in this territory, it shall be lawful for the party wishing to use the same, on giving to the adverse party, or his attorney, or the clerk of the court in which the action is pending, when the defendant has not appeared therein, five days' previous notice, together with a copy of the interrogatories intended to be put to such witness or witnesses, to sue out from the proper clerk's office a commission, under the seal of the court, to be directed to any person as commissioner, or to any judge or justice of the peace, clerk of a court of record, or notary public of the county, or town, or city in which such witness or witnesses may reside, authorizing and requiring him to cause such witness or witnesses to come before him, at such place and time as he may designate and appoint, and faithfully to take his, her, or their deposition or depositions upon all such interrogatories as may be enclosed with or attached to such commission, both on the part of the plaintiff and the defendant, and none others, and to certify the same when taken, together with the said commission and interrogatories, to the court in which such cause may be pending, with the least possible delay. If issued to any country out of the United States, it may be directed to any minister, ambassador, consul, vice-consul, or consular agent of the United States in such country, or to any person agreed upon by the parties.

NOTE.—Section 683, act of Feb. 19th, 1883.

Deposition may be read with like effect as if witness present

SEC. 684. Every examination and deposition which shall be taken and returned according to the provisions of this act, may be read in evidence in the cause in which it shall be taken, with the like effect as if such witness had been present, and examined by parol in open court, on the trial or hearing thereof.

May be read by either party.

SEC. 685. All depositions taken in pursuance hereof, when returned into court may be read by either party, on the trial of the cases to which they relate.

CHAPTER VIII.

PROCEEDINGS TO PERPETUATE TESTIMONY.

Sec. 686. Testimony may be perpetuated.
Sec. 687. What petition of applicant, verified by oath, must state.
Sec. 688. Authority of person appointed to take the testimony.
Sec. 689. How taken and returned.
Sec. 690. Petition, order and papers filed prima facie evidence.
Sec. 691. When may be used on trial.
Sec. 692. Effect of deposition.

Perpetuation of testimony

SEC. 686. The testimony of a witness may be taken and perpetuated, as provided in this chapter.

Petition, notice and order.

SEC. 687. The applicant must produce to a district or a probate judge, a petition verified by the oath of the applicant, stating:

First. That the applicant expects to be a party to an action in a court in this territory, and in such case the names of the persons whom he expects will be adverse parties; or,

Second. That the proof of some fact is necessary to perfect the title to property in which he is interested, or to establish marriage, descent, heirship, or any other matter which it may hereafter become material to establish, though no suit may at the time be anticipated, or, if anticipated, he may not know the parties to such suit; and,

Third. The name of the witness to be examined, his place of residence, and a general outline of the facts expected to be proved.

The judge to whom such petition is presented must make an order allowing the examination, and designating the officer before whom the same must be taken, and prescribing the notice to be given, which notice, if the parties expectant are known, and reside in this territory, must be personally served; and, if unknown, such notice must be served on the clerk of the county where the property to be affected by the evidence is situated, or the judge making the order resides, as may be directed by him, and by publication thereof in some newspaper, to be designated by the judge, for the same period required for the publication of summons. The judge must also designate in his order the clerk of the county to whom the depositions must be returned when taken.

Officer to take the deposition.

SEC. 688. The person appointed by the judge to take the depositions is authorized, if a resident of this territory, on receiving a copy of the order of the judge, and of the notice prescribed in the last section, with proof of its personal service or publication, or if a resident without the territory, on receiving the commission mentioned in the next section, with proof of like service of publication of the notice, to take the deposition of the witness named in the order of the judge or in the commission; or, if more than one witness is thus named, of such of them as appear before him at the time designated; and the taking of the same may be continued from time to time.

The examination.

SEC. 689. The examination must be by question and answer, and if the testimony is to be taken outside of this territory, it must be taken upon a commission to be issued by the judge allowing the examination, under the seal of the court of which he is a judge, and upon interrogatories to be settled by the judge granting such commission, unless the parties expectant, if known, otherwise agree. If such parties are unknown, notice of the settlement of the interrogatories shall be published in some newspaper, for such time as the judge may designate. The deposition, when completed, must be carefully read to and subscribed by the witness, then certified by the officer or person taking the same, and shall then be sealed up and delivered or transmitted to the clerk of the county designated in the order of the judge allowing the examination, who shall file the same when received The judge allowing the examination shall file with the clerk the order for the examination, the petition on which the same was granted, with proof of service of the order and notice.

Deposition to be certified and filed.

Prima facie evidence.

SEC. 690. The petition and order and papers filed by the judge, as provided in section 687, or a certified copy thereof, are *prima facie* evidence of the facts stated therein to show compliance with the provisions of this chapter.

Depositions when same may be read.

SEC. 691. If a trial be had between the parties named in the petition as parties expectant, or their successors in interest, or between any parties wherein it may be material to establish the facts which depositions prove, or tend to prove, upon proof of the death or insanity of the witnesses, or that they cannot be found, or are unable, by reason of age or other infirmity, to give their testimony, the depositions or copies thereof may be used by either party, subject to all legal objections; but if the parties attended at the examination, no objection to the form of an interrogatory can be made at the trial unless the same was stated at the examination.

Effect of deposition

SEC. 692. The deposition so taken and read in evidence has the same effect as the oral testimony of the witness, and no other, and every objection to the witness, or to the relevancy of any question put to him, or of any answer given by him, may be made in the same manner as if he were examined orally at the trial.

CHAPTER IX.

ADMINISTRATION OF OATHS AND AFFIRMATIONS.

Sec. 693. Who may administer oaths.
Sec. 694. How persons other than Christians to be sworn.
Sec. 695. Form of affirmation.

Oaths: who may administer

SEC. 693. Every court of this territory, every judge or clerk or deputy clerk of any court, every justice of the peace, and every notary public, county clerk, and every officer authorized to take testimony, or to decide upon evidence in any proceeding, shall have power to administer oaths or affirmations.

Religious ceremony.

SEC. 694. When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such.

Affirmation.

SEC. 695. A witness who desires it may, at his option, instead of taking an oath, make his solemn affirmation or declaration by assenting when addressed in the following form:

"You do solemnly affirm that the evidence you shall give in this issue (or matter) pending between ——— and ——— shall be the truth, the whole truth, and nothing but the truth." Assent to this affirmation shall be made by answer, "I do." A false affirmation or declaration shall be deemed perjury equally with a false oath.

NOTE.—The foregoing 695 sections, except where otherwise specially noted, are from Act of Feb. 16, 1877.

TITLE XVII.—CHAPTER I.

COURTS OF JUSTICE IN THIS TERRITORY.

Sec. 696. What courts constitute courts of justice.
Sec. 697. Supreme court jurisdiction.
Sec. 698. Territory—how divided.

Sec. 699. District judge for each district jurisdiction.
Sec. 700. Original jurisdiction.
Sec. 701. Appellate jurisdiction.
Sec. 702. Courts and judges have power to issue all writs.
Sec. 703. Terms to be held as provided by law; county to furnish rooms, etc.
Sec. 704. District judge to transact business at chambers.
Sec. 705. Transfer of action from district court to probate court.
Sec. 706. Probate court in each county.
Sec. 707. Probate court—power of.
Sec. 708. Probate court—jurisdiction of.
Sec. 709. Probate court—when to be open.
Sec. 710. Provisions of act applicable in all probate courts.
Sec. 711. If judge disqualified, case transferred to district court.
Sec. 712. Probate court—judge to be conservator of peace.
Sec. 713. Judge of probate courts have same power as district courts to grant orders and writs.
Sec. 714. Jurors—how many necessary.
Sec. 715. Clerks to issue venire.

Courts.

SEC. 696. The following shall be the courts of justice of this territory:
First. The supreme court.
Second. The district courts.
Third. The probate courts.
Fourth. The justice's courts.

SUPREME COURT.

13th ses p. 66

Supreme court.

SEC. 697. The supreme court shall have appellate jurisdiction in all cases tried in the district courts, and shall hold its sessions at the capital, at the times fixed by law.

NOTE.—Section 696 act of Feb 17th, 1883

DISTRICT COURTS.

Judicial districts.

SEC. 698. The territory shall be divided into three judicial districts.

Jurisdiction.

SEC. 699. There shall be a district judge for each of the judicial districts. The courts held by them shall be district courts of the territory. The jurisdiction of these courts shall be of two kinds:
First. Original.
Second. Appellate.

SEC. 700 The district court shall have original jurisdiction in civil cases where the amount in dispute, or value of the property sued for, exceeds fifty dollars, and in all criminal cases not otherwise provided for: *Provided*, The district court may enter judgment for a less sum than fifty dollars upon the plaintiff paying costs, and may in like manner enter judgment for the recovery of personal property of less than fifty dollars value.

Original jurisdiction.

SEC. 701. The appellate jurisdiction of these courts shall extend to hearing upon appeal an order or judgment of a probate court or justice of the peace in the cases provided by law.

Appellate jurisdiction

SEC. 702. The courts and judges thereof shall have power to issue all writs necessary and proper to the complete exercise of the power conferred on them by the constitution, organic act, and laws of this territory.

Power to issue writs.

SEC. 703. The terms shall be held at such times and places as provided by law. If a room for holding the court be not provided by the county, together with attendants, fuel, lights, and stationary, suitable and sufficient for the transaction of business, the court may direct the sheriff to provide such room, attendants, fuel, lights, and stationary, and the expense shall be a county charge.

Terms of court.

SEC. 704. The district judges shall at all reasonable times, when not engaged in holding courts, transact such business at their chambers as may be done out of court. At chambers they may hear and dispose of all applications for orders and writs which are usually granted in the first instance upon an *ex parte* application, and may, in their discretion, also hear applications to discharge such orders and writs.

Duty of judge at chambers

SEC. 705. When an action or proceeding is commenced in a district court in which a probate court has concurrent jurisdiction, the district court may, if the parties agree, by order, transfer the same to the probate court of the same county. Upon such transfer, the probate court shall have and exercise over such action or proceeding, the same jurisdiction as if originally commenced therein.

Action may be transferred to probate court

PROBATE COURT.

SEC. 706. There shall be in each county a probate court with the jurisdiction conferred by this chapter.

Probate court

Power of probate court.

SEC. 707. The probate court shall have power to open and receive the proof of last wills and testaments, and to admit them to probate, to grant letters testamentary of administration, and of guardianship, and to revoke the same for cause shown, according to law, to compel executors and administrators and guardians to render an account when required, or at the period by law to order the sale of property of estates, or belonging to minors, to order the payment of debts due by estates, to order and regulate the partitions of property or estates of deceased persons, to compel the attendance of witnesses, to appoint appraisers or arbitrators, to compel the production of title deeds, papers, or other property of an estate or of a minor, and to make such other orders as may be necessary and proper, in the exercise of the jurisdiction conferred on the probate court.

Jurisdiction of probate court.

SEC. 708. The probate courts shall have jurisdiction within their respective counties, in all civil actions to recover money or damages, wherein the damages or debt claimed does not exceed five hundred dollars. *Provided*, That they shall not have jurisdiction in any matter in controversy, when the title or right to the peaceable possession of land may be in dispute, or in chancery, or (in)divorce cases.

Terms of probate court.

SEC. 709. That there shall be regular terms of the probate court held in the several counties of the territory, on the first Mondays of January, March, July, September, and November of each year, for the transaction of probate business.

The probate courts shall be always open for the transaction of all other business within their jurisdiction.

NOTE—Act of Feb. 13th, 1874.

Provisions applicable to, proceedings in probate court.

SEC. 710. The provisions of this code, so far as applicable, shall govern the proceedings and practice in the probate courts of the territory in civil actions, but no judgment rendered in the probate court shall be a lien upon any real estate, nor shall any real estate be sold on execution issued out of the probate court. Any person recovering a judgment in the probate court may file a certified transcript of such judgment with the clerk of the district court of the county wherein such judgment is recovered; and said clerk shall docket such judgment in the same manner as judgments rendered in said district court. And said judgment, from the time of such docketing, shall be a lien upon the real estate of the defendant, as provided by law; and execution may be issued thereon by the clerk of the said district court, and real estate sold in the same manner as on other executions issued on judgments in said district court: *Provided*, That writs of attachments issued out of the probate court may be levied on real estate in the same manner as writs issued out of the district court; but no such real estate levied on by attachment shall be sold on execution until the judgment is docketed in the district court as above provided.

NOTE—Act of February 2d, 1876

If judge disqualified cause transferred.

SEC. 711. If the judge be disqualified, for any cause, from sitting on the determination of any cause or proceeding pending before him, the cause shall be certified, with the original papers, to the district court of the district including the county, which shall proceed thereon to final judgment and determination.

Probate judge; a peace officer.

SEC. 712. That each judge of the probate courts shall be a conservator of the peace throughout his county.

Power of probate judge as to writs and orders.

SEC. 713. In all civil cases within their jurisdiction the probate courts and the judges thereof shall have the same power to grant all orders and writs and process which the district courts, or the judges thereof, have power to grant within their jurisdiction, and to hear and determine all questions arising within their jurisdiction as fully and completely as the district courts or the judges thereof have power to do under the laws of this territory.

Number and qualification of jurors.

SEC. 714. Juries in all civil actions in the probate court shall consist of not more than twelve nor less than six persons having the qualifications of electors, who shall not be summoned until the cause is at issue and set for trial, and a demand is made by one or more of the parties, and their fees for one day paid into the hands of the clerk by the party making the demand.

Venire

SEC. 715. The clerk shall issue a *venire*, returnable on the day upon which the cause is set for trial, and if, on the return day, the panel be not full, it may be filled by summoning others.

CHAPTER II.

FORCIBLE ENTRY AND UNLAWFUL DETAINER.

Sec. 716. Forcible entry and detainer—what constitutes.

Sec. 717. Any justice of the peace, authority to inquire into.

Sec. 718. Justice to issue summons when complaint made.
Sec. 719. Summons—upon whom served.
Sec. 720. Justice to hear complaint after return of summons.
Sec. 721. Trial—when postponed.
Sec. 722. Testimony to be taken in same manner as in other cases.
Sec. 723. Trial.
Sec. 724. If defendant found guilty, punishment and costs.
Sec. 725. If jury cannot agree.
Sec. 726. Damages—how assessed.
Sec. 727. If rent of land not paid, defendant to quit possession.
Sec. 728. Preceding section—whom not to apply to.
Sec. 729. Juror or witness not appearing to be fined.
Sec. 730. Appeals.
Sec. 731. Appeals to be tried in district court.
Sec. 732. Amendments to complaint.
Sec. 733. Rules and regulations to apply as in other cases.

Forcible entry and detainer defined

SEC. 716. No person or persons shall hereinafter make any entry into lands, tenements or other possessions, or by entering upon any gulch mining claim, or quartz lode mining claim, or other mining claim, in the temporary absence of the party or parties in possession, or by entering peaceably, and the turning out by force, or frightening by threats, or other circumstances of terror, the party or parties out of possession, and detain and hold the same. In every such case, the person so offending shall be deemed guilty of a forcible entry and detainer within the meaning of this act; but not in cases where entry is given by law, and in such cases not with strong hand nor with multitude of people, but only in a peaceable manner; and if any person from henceforth do the contrary, and thereof be duly convicted, he shall be punished by fine.

Jurisdiction of justice of the peace.

SEC. 717. Any justice of the peace shall have authority to inquire as hereinafter directed, as well as against those who make unlawful or forcible entry into lands, tenements or other possessions, and detain the same as against those who, having lawful and peaceable entry into lands, tenements, or other possessions, unlawfully detain the same, and if it be found, upon such inquiry, that an unlawful or forcible entry hath been made, or that the said lands, tenements, or other possessions, after a lawful entry, are held unlawfully, then such justice shall cause the party complaining to have restitution thereof.

Complaint; summons

SEC. 718. When any complaint shall be made in writing to any justice of the peace, of any such unlawful or forcible entry, or unlawful detainer, said justice shall issue a summons, directed to the sheriff or any constable of the county, commanding him to summon the person or persons against whom such complaint shall have been made, to appear before said justice on a day named in the summons, which shall not be more than ten days from the issuing of such summons, and at the place therein mentioned.

Service of summons

SEC. 719. Such summons shall be served on the person or persons against whom the same is issued, as other summons are served issued by a justice, at least four days before the return day thereof, and the officer serving the same shall make return of the time and manner of such service.

Hearing

SEC. 720. After the return of the summons served as hereinbefore provided, and at the time and place appointed in said summons, the justice shall proceed to hear and determine said complaint, unless either party demand a jury, in which case a jury shall be summoned in the same manner and on the same terms, and the trial shall be had as in other cases of trial by a jury before a justice.

Postponement.

SEC. 721. If at the time set for trial, the defendant his agent, or attorney, shall make oath that he cannot safely proceed to trial for want of some material witness, naming him, that he has made due exertion to obtain such witness or his testimony, and believes if an adjournment be allowed he will be able to procure the testimony of such witness, in which case, if such person or persons will give bond, with sufficient surety, conditioned to pay the said complainant for all rent that may accrue during the pending of suit, and all costs and damages consequent upon such adjournment, the said justice shall adjourn said cause for such reasonable time as may appear necessary, not exceeding one month.

Testimony.

SEC. 722. The testimony of any witness which may be considered necessary by either party, may be taken in the same manner and with like effect as is provided for the taking of testimony in other cases in justices' courts.

What may be shown by the respective parties

SEC. 723. On the trial the complainant shall only be required to show, in addition to the forcible entry or detainer complained of, that he was peaceably in actual possession at the time of the forcible entry, or was entitled to the possession of the premises at the time of the unlawful holding over. The defendant may show in his defense that he or his ancestors, or those whose interest in such premises he claims, have been in quiet possession thereof for the space of one whole year together next before the said inquisition, and that his interest therein is not yet ended or determined; and such showing shall be a bar to the prosecution; and in no case where the title to land is involved shall a justice of the peace have cognizance.

Judgment.

SEC. 724. If upon the trial, upon any complaint under this act, the justice or jury shall find the defendant or defendants, or either of them, guilty of the allegations of the complaint, said justice shall enter judgment for the complainant to have restoration of the premises, and shall impose such fine, not exceeding one hundred dollars, considering all the circumstances, as he may deem just, and shall tax the costs for the complainant, and may issue execution therefor; and the said justice shall award and issue a writ of restitution. But if the said justice or jury find that the person complained of is not guilty, the justice shall tax the costs against the complainant, and issue execution therefor.

New trial if jury disagree.

SEC. 725. If the jury impaneled cannot agree upon a verdict, the justice may, with the consent of the parties, discharge them, and issue a *venire*, returnable forthwith, or at some other time agreed upon by the parties.

Treble damages.

SEC. 726. In all cases of a verdict by the justice or jury for the complainant, the damages shall be assessed as well for the waste and injury committed upon the premises as for the rents and profits during such detainer; and the verdict shall also find the monthly rents and profits of the said premises and the complainant shall be entitled to recover treble damages against the persons against whom the judgment has been rendered, which damages shall be assessed by the justice or jury, and when so assessed shall be trebled by said justice and entered as a judgment in the cause upon which execution may issue.

Proceedings where party holds over.

SEC. 727. When any person shall hold over any lands, tenements, or other possessions, after the termination of the time for which they are demised or let to them, or to the person under whom they hold possession, or contrary to the covenants or conditions of the lease or agreement under which they hold, or after any rent shall become due according to the terms of the lease or agreement, and shall remain unpaid for the space of three days, in all such cases if the lessor, his heirs, executors, administrators, assigns, agent, or attorney, shall make demand in writing of such tenant that they shall deliver possession of the premises held as aforesaid, and if such tenant shall refuse or neglect for the space of three days after such demand to quit the possession of such lands or tenements, or to pay the rent thereof due and unpaid as aforesaid, upon complaint thereof to any justice of the peace of the proper county the, justice shall proceed to hear, try, and determine the same in the same manner as in other cases hereinbefore provided for, but shall impose no fine in any such case mentioned in this section.

To whom preceeding section shall apply.

SEC. 728. The preceding section shall not extend to any person who has or who shall have continued in possession one year after the termination of the time for which the premises were demised or leased or let to them or those under whom they hold possession, or to any person who continues in possession three years quietly and peaceably.

Penalty for disobeying summons or subpœna.

SEC. 729. Every person summoned as a juror, or subpœnaed as a witness, who shall not appear, or who appearing shall refuse to serve or give evidence in any prosecution instituted under this act, shall forfeit and pay for every such default or refusal to the use of the county, unless some resonable cause be assigned, such fine, not exceeding twenty dollars, as the said justice shall think proper to impose, and execution may be issued therefor.

Appeal

SEC. 730. Appeals may be taken from all judgments rendered under this act to the district court, under the same rules and restrictions as to notice, appeal bond, and other matters, as are required on appeals from justices' courts in other cases; but in case such appeal be taken by the defendant, the undertaking shall contain an additional condition, to the effect that he will pay to the plaintiff all rents, profits and other damages that may accrue during the pendency of the appeal. If the appeal should be decided against him beyond the filing of the appeal bond, all proceedings shall be stayed.

Trial of appeal

SEC. 731. Such appeals shall be tried in the district court as other appeals from justices' courts are tried.

Amendments

SEC. 732. Amendments to the complaint, answer, or other proceedings in matters of form only, may be allowed by the justice, or the district court, on appeal at any time before judgment, upon such terms as may be just, and all matters of excuse, justification, or evidences of allegations in the complaint, may be given in evidence under the answer.

Rules applicable

SEC. 733. All rules and regulations relating to trials before justices of the peace in other cases, and not inconsistent with the provisions of this title, shall be applicable, and be observed in trials arising under this title.

TITLE XVIII.

PROCEEDINGS IN JUSTICES COURTS IN CIVIL CASES.

CHAPTER I.

Sec. 734. Courts, denominated justices' courts—jurisdiction.
Sec. 735. Jurisdiction—in what cases.
Sec· 736. Jurisdiction—extension of.
Sec. 737. Party may prosecute in person or by attorney. Any person may act as attorney, except constable.
Sec. 738. Judgment—upon confession.
Sec. 739. Voluntary appearance of party without summons.

Justice's courts.

SEC. 734. The courts held by justices of the peace in this territory shall be denominated justices' courts and shall have the jurisdiction conferred by this act· but nothing contained in this act shall affect their jurisdiction in actions or proceedings now pending therein. nor shall it affect any judgment or order already made. or proceedings already taken.

13th ses. p. 46.

Jurisdiction of justices of the peace.

SEC. 735. Justices' courts shall have jurisdiction of the following cases:

First. In all civil actions where the amount claimed does not exceed the sum of three hundred dollars.

Second. Of actions to recover the possession of personal property when the value of such property does not exceed three hundred dollars.

Third. Of actions for a forcible or an unlawful entry upon, or a forcible or unlawful detainer of lands tenements, or other possessions.

The jurisdiction conferred by this section shall not extend, however, to civil actions in which the title to real property shall come in question.

NOTE.—Section 734 from act of March 2, 1883.

Jurisdiction co-extensive with county

SEC. 736. The jurisdiction of all justices of the peace shall be co-extensive with the limits of the county in which they are elected, and no other or greater unless expressly provided by statute.

Parties may prosecute in person or by attorney.

SEC. 737. Parties in justices' courts may prosecute or defend in person or by attorney; and any person on the request of a party may act as attorney, except that the constable by whom the summons or jury process was served shall not appear or act on the trial on behalf of either party.

Judgment upon confession

SEC. 738. Judgment upon confession may be entered up in justices' court in this territory specified in the confession.

Jurisdiction upon voluntary appearance.

SEC. 739. Justices' courts shall have jurisdiction of an action upon the voluntary appearance of the parties without summons, without regard to the residences or the place where the cause of action arose, or the subject matter of the action may exist.

CHAPTER II.

ACTIONS.

Sec. 740. Actions—how commenced.
Sec. 741. Guardian—how appointed.
Sec. 742. Summons—how addressed.
Sec. 743. Appearance of defendant—time of service.
Sec. 744. Summons—by whom served and on whom.
Sec 745. Party residing out of territory—how served.
Sec. 746. Order for arrest—when made.
Sec. 747. Affidavit for arrest—before order of arrest made.
Sec. 748. When defendant arrested—where taken.
Sec. 749. What required of officer making arrest.
Sec. 750. Defendant to be kept in custody until ordered discharged.
Sec. 751. Defendant may demand immediate trial.
Sec. 752. Defendant may demand adjournment.
Sec 753. Defendant may put facts in issue by plea under oath.
Sec. 754. Writ to attach property of defendant issued by justice.
Sec. 755. Written undertaking required before writ issued.
Sec. 756. Writ—to whom directed.

Sec. 757. Writ of attachment in district court applicable to justice's court—provisions of.
Sec. 758. Plaintiff may claim delivery of property
Sec. 759. What plaintiff is required to do before delivery.
Sec. 760. Justice shall issue order—when.
Sec. 761. Officer shall take property upon receipt of order.
Sec. 762. Defendant may require return of property within two days.
Sec. 763. If property not delivered, building or enclosure to be broken open.
Sec. 764. Property to be kept in secure place
Sec. 765. If property claimed by third party.
Sec. 766. Order and affidavit—when returned.
Sec. 767. Qualification of sureties.

Commencement of action in justice's court.

SEC. 740. Actions in justice's courts shall be commenced by filling a copy of the account, note, bill, bond, or instrument upon which the action is brought, with a statement of the amount due therein, or a concise statement in writing of the cause of action, and the issuance of a summons thereon, or by the voluntary appearance and pleading of the parties without summons; in the latter case the action shall be deemed commenced at the time of appearance.

Appointment of guardian

SEC. 741. When a guardian is necessary, he shall be appointed by the justice as follows:

First. If the infant be plaintiff, the appointment shall be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years or upwards; if under that age, upon the application of some relative or friend. The consent in writing of the guardian to be appointed and to be responsible for costs if he fail in the action, shall be first filed with the justice.

Second. If the infant be defendant, the guardian shall be appointed at the time the summons is returned or before pleading. It shall be the right of the infant to nominate his own guardian, if the infant be over fourteen years of age and the proposed guardian be present and consent in writing to be appointed, otherwise the justice may appoint any suitable person who gives such consent.

Summons.

SEC. 742. The summons shall be addressed to the defendant by name, or, if his name be unknown, by a fictitious name, and shall summon him to appear before the justice at his office, naming its township or city, and at the time specified therein, to answer the complaint of the plaintiff for a cause of action therein described, in general terms sufficient to apprise the defendant of the nature of the claim against him, and in an action for money or damages shall state the amount the plaintiff will take judgment for if the defendant fail to answer, and shall be subscribed by the justice and dated on the day of its issue.

Time for appearance.

SEC. 743. The time mentioned in the summons for the appearance of the defendant, and the time of service, shall be as follows:

First. When the summons is accompanied with an order for the arrest of the defendant it shall be returnable immediately.

Second. In all other cases it shall be returnable in not less than four or more than ten days from its date, and shall be served at least four days before the time for appearance.

Service.

SEC. 744. The summons shall be served by the sheriff, or a constable of the county, or by some one specially appointed by the justice, as follows:

First. If the action be against a corporation, by reading the same to the president or other head of the corporation, or to the secretary, cashier, or managing agent thereof, or when no such officer resides in the county, to a director resident therein, or by leaving a copy of the summons at the principal office or place of business of such corporation in the county.

Second. If against a minor under the age of fourteen years, by reading the same to his father, mother, or guardian, or if there be none within the county, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is, or by leaving a copy thereof at the dwelling house or place of abode of such person.

Third. If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, by reading the same to such guardian, or by leaving a copy thereof at his place of residence.

Fourth. In all other cases, by reading the same to the defendant personally, or by leaving a copy at his place of residence.

Publication of summons.

SEC. 745. When the person on whom the service is to be made resides out of the territory, or cannot, after due diligence, be found within the territory, or conceals himself to avoid the service of summons, and the fact shall appear by affidavit to the satisfaction of the justice, and it shall in like manner appear that a cause of action exists against the defendant in respect to whom the service is to be made, the justice shall grant an order that service be made by publication of the summons. The order shall direct the publication to be made in a newspaper printed in the county in which the action is brought if there is one, and, if not, in the newspaper printed nearest thereto, at least once a week: *Provided*, That a publication against a defendant residing out of the territory, or absent therefrom, shall not be less than four weeks. The service of summons shall be deemed complete at the expiration of the time prescribed by the order of publication, and the defendant shall have ten days after the completion of the service to answer.

Order for arrest.

SEC. 746. An order for the arrest of the defendant may be endorsed on a summons issued by the justice, and the defendant may be arrested thereon by the sheriff or constable at the time of serving the summons, and brought before the justice, and there detained until duly discharged, in the following cases:

First. In an action for the recovery of money or damages, and a cause of action arising on contract, express or implied, where the defendant is about to depart from the territory with the intent to defraud his creditors.

Second. In an action for the embezzlement of property or fraudulently misapplied or converted to his own use, by an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity.

Third. When the defendant has been guilty of fraud in contracting the debt, or incurring the obligation for which the action is brought.

Fourth. When the defendant has removed, concealed, or disposed of the property, or is about to do so, with intent to defraud his creditors. But no female shall be arrested in any action.

Affidavit and undertaking for arrest.

SEC. 747. Before any order for arrest shall be made, the party applying shall prove to the satisfaction of the justice, by the affidavit of himself or some other person, the facts on which the application is founded. The plaintiff shall also execute and deliver to the justice a written undertaking, with two or more sureties, to the effect that if the defendant recover judgment, or if the order of arrest be dismissed, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least two hundred dollars.

Arrested defendant to be taken before justice

SEC. 748. The defendant, immediately on being arrested, shall be taken to the office of the justice who made the order, and if he be absent or unable to try the action, or if it be made to appear to him by the affidavit of the defendant that he is a material witness for the defendant, the officer shall immediately take the defendant before the next nearest justice within the county, who shall take cognizance of the action, and proceed thereon as if the summons had been issued, and the order of arrest made by him.

Notice to plaintiff.

SEC. 749. The officer making the arrest shall immediately give notice thereof to the plaintiff, or his attorney, or agent, and endorse on the summons and subscribe a certificate stating the time of serving the same, the time of the arrest, and of his giving notice to the plaintiff.

Custody of defendant.

SEC. 750. The officer making the arrest shall keep the defendant in custody until duly discharged by the order of the justice; *Provided*, That the officer shall not be bound to keep such person under arrest more than twenty-four hours, unless the plaintiff advance each day the expenses of keeping such person, which expense shall be taxed as costs in the action, and in no case shall be a charge against the county.

Demand for immediate trial

SEC. 751. The defendant under arrest, on his appearance with the officer, may demand a trial immediately, and, upon such demand being made, the trial shall not be delayed beyond three hours, except by the trial of another action pending at the same time, or he may have an adjournment, and be discharged on giving bail, as provided in the next section. An adjournment at the request of the plaintiff beyond three hours, shall discharge the defendant from arrest, but the action may proceed as in other cases.

Adjournment, undertaking.

SEC. 752. If the defendant, on his appearance, demand an adjournment, the same shall be granted, on condition that he execute and file with the justice an undertaking, with two or more sufficient sureties, to be approved by the justice, to the effect that he will render himself amenable to the process of the court during the pending of the action, and such as may be issued to enforce the judgment therein, if it be found by the justice that the defendant was subject to arrest in such action, or that the sureties will pay to the plaintiff the amount of any judgment he may recover in the action. On filing such undertaking, the defendant shall be discharged from custody.

Defendants' plea.

SEC, 753. The defendant may file a plea under oath, putting in issue the facts stated in the affidavit for the order of arrest, and the plaintiff shall be held to establish such facts, and if he fail to do so, the order of arrest shall be dismissed, and the defendant may proceed upon the undertaking of the plaintiff for his damages occasioned by the arrest.

Provisions applicable.

The provisions of sections numbered from 146 to 154, inclusive of this division, in relation to the examination and discharge of a defendant imprisoned on execution in a civil action, shall apply to justices' courts, and justices of the peace shall have the same powers in their courts as are by said sections granted to the judge.

Writ of attachment: affidavit

SEC. 754. A writ to attach the property of the defendant shall be issued by the justice, on receiving an affidavit by or on behalf of the plaintiff, showing the same facts that are required to be shown by the affidavit in cases of attachment in the district court.

Undertaking

SEC. 755. Before issuing the writ, the justice shall require a written undertaking on the part of the plaintiff, with two or more sufficient sureties, to the effect that if the defendant recover judgment, or if the attachment be dismissed, the plaintiff will pay all costs that may be awarded to the defendant, and all damages that he may sustain by reason of the attachment.

Writ: to whom directed and requirements of.

SEC. 756. The writ may be directed to the sheriff, or any constable of the county, and shall require him to attach and safely keep all the property of the defendant in the county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, unless the defendant give him security by the undertaking of the sufficient sureties, in an amount to satisfy such demand and costs, in which case to take such undertaking.

Provisions applicable.

SEC. 757. The provisions of this act, relating to attachments in the district courts, shall be applicable to justice's courts, the word constable being substituted for the word sheriff where the writ is directed to a constable, and the word justice being substituted for the words judge and clerk.

Claim and delivery

SEC. 758. The plaintiff in an action to recover possession of personal property may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him, as provided herein.

14th ses. p. 104.

Affidavit in claim and delivery

SEC. 759. When a delivery is claimed, an affidavit shall be made by the plaintiff, or some one in his behalf, showing:

First. That the plaintiff is the owner of the property claimed, particularly describing it, or is lawfully entitled to the possession thereof.

Second. That the property is wrongfully detained by the defendant.

Third. That the same has not been taken for a tax, assessment, or fine, pursuant to a statute, or seized under an attachment or execution against the property of the plaintiff, or if so seized, that it is by statute exempt from such seizure.

Fourth. The actual value of the property.

NOTE—Section 758, from act of March 5th, 1885

Endorsement on affidavit

SEC. 760. The justice shall thereupon, by an endorsement in writing upon the affidavit, order the sheriff or constable of the county to take the same from the defendant and deliver it to the plaintiff upon receiving the undertaking mentioned in the next section.

Undertaking.

SEC. 761. Upon the receipt of the affidavit and order, with a written undertaking executed by two or more sufficient sureties, approved by the officer, to the effect that they are bound in double the value of the property, as stated in the affidavit, for the prosecution of the action, for the return of the property to the defendant if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff, the officer shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody, and shall notify the defendant in writing, if he can be found in the county, of the taking of such property, and by what authority.

Defendant may require return of property

SEC. 762. At any time within two days after the taking of such property by the officer, the defendant may require the return thereof, upon giving to the officer a written undertaking, with two or more sureties, to be approved by the officer, to the effect that they are bound in double the value of the property as stated in the affidavit of the plaintiff for the delivery thereof to the plaintiff, if such delivery be adjudged, and for payment to him of such sum as may from any cause be recovered against the defendant. If a return of the property be not required, it shall be delivered to the plaintiff, except as provided in this act.

Concealed property

SEC. 763. If the property, or any part thereof, be concealed in a building or enclosure, the officer shall publicly demand its delivery, and if it be not delivered, he shall cause the building or enclosure to be broken open, and take the property into his possession.

Property to be securely kept by officer.

SEC. 764. When the officer shall have taken the property, as provided in this act, he shall keep it in a secure place and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping, the same.

Claim of third party

SEC. 765. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or right to the possession thereof, stating the grounds of such title or right, and serve the same upon the officer, the officer shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff on demand of him or his agent, indemnify the officer against such claim by an undertaking executed by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property as specified in the affidavit of the plaintiff over and above their debts and liabilities, exclusive of property exempt from execution, and are property holders of the county, and no claims to such property by any other person than the defendant or his agent, shall be valid against the officer unless so made.

Officer's return.

SEC. 766. The officer shall return the order and affidavit, with his proceedings thereon, to the justice within five days after taking the property mentioned therein.

Qualification of sureties

SEC. 767. The qualification of sureties on the several undertakings required by this chapter shall be as follows:

First. Each of them shall be a resident and property holder within the county.

Second. Each shall be worth double the amount stated in the undertaking over and above all his debts and liabilities, exclusive of property exempt from execution, which facts shall appear by the affidavits of the sureties annexed to the undertaking or endorsed thereon.

CHAPTER III.

PLEADINGS AND TRIAL.

Sec. 768. Pleadings in justices' court.

Sec. 769. Pleadings—when to be in writing.

Sec. 770. Oral pleadings—substance to be entered on docket.

Sec. 771. Complaint—what shall state.

Sec. 772. Answer—what to contain.

Sec. 773. Statement equivalent to denial—when.

Sec. 774. Set-off. Original account or statement to be exhibited.

Sec. 775. Defendant admits genuineness of signature—when.

Sec. 776. Either party may object when pleading not explicit.

Sec. 777. Variance between proof and allegations—how regarded.

Sec. 778. Pleadings—when may be amended.

Sec. 779. Questions of title to real property not to be raised.

Sec. 780. Actions transferred from one justice to another.

Sec. 781. When justice may adjourn trial.

Sec. 782. Trial adjourned by consent or on application of either party.

Sec. 783. Adjournment had—when.

Sec. 784. Adjournment, for how long time.

Sec. 785. Dismissal of action.

Sec. 786. Either party failing to appear, trial may proceed.

Sec. 787. Trial by jury—when demanded—when waived.

Sec. 788. What number shall compose jury.

Sec. 789. Jurors competent to serve in district court.

Sec. 790. Peremptory challenges—how many.

Complaint and answer.

SEC. 768. The pleadings in justices' courts shall be:

First. The complaint by the plaintiff, stating the cause of action.

Second. The answer by the defendant, stating the grounds of the defense.

Pleadings written or oral.

SEC. 769. The pleadings shall be in writing and verified by the oath of the party, his agent or attorney, when the action is for a forcible or unlawful detention of lands, tenements, or other possessions. In all other cases the pleadings may be oral or in writing.

Pleadings, how entered and form of.

SEC. 770. When the pleadings are oral, the substance of them shall be entered by the justice in his docket; when in writing, they shall be filed in his office and a reference to them made in his docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended.

Statement in complaint.

SEC. 771. The complaint shall state in a plain and direct manner the facts constituting the cause of the action.

Contents of answer

SEC. 772. The answer may contain a denial of any of the material facts stated in the complaint which the defendant believes to be untrue, and also a statement, in a plain and direct manner, of any other facts constituting a defense, counter-claim, or set-off, upon which an action might be brought by the defendant against the plaintiff in a justice's court.

Want of knowledge equivalent to denial.

SEC. 773. A statement in an answer that the defendant has not sufficient knowledge or information to form a belief in respect to a particular allegation in the previous pleadings of the adverse party shall be equivalent to a denial.

Copy of account or instrument to be filed.

SEC. 774. When the cause of action or defenses, or a set-off to a set-off, arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver a copy of the account or instrument to the court, and to state that there is due to him thereon from the adverse party a specified sum which he claims to recover or set-off; the court may, at the time of the pleading, require that the original account or instrument be exhibited to the inspection of the adverse party, and a copy to be furnished; or if it be not so exhibited, and a copy furnished, may prohibit its being afterwards given in evidence, unless it appear that such instrument is not in the possession of the party pleading it, or under his control.

Copy deemed genuine if not denied

SEC. 775. If the plaintiff annex to his complaint, or file with the justice at the time of issuing the summons, a copy of the promissory note, bill of exchange, or other written obligation for the payment of money upon which the action is brought, the defendant shall be deemed to admit the genuineness of the signatures of the maker, indorsers, or assignors thereof, unless he specifically deny the same in his answer under oath.

Objection to pleading.

SEC. 776. Either party may object to the pleading of his adversary, or to any part thereof, that it is not sufficiently explicit to enable him to understand it, or that it contains no cause of action or defense, although it be taken as true. If the court deem the objections as well founded, it shall order the pleading to be amended, and if the party refuse to amend, the defective pleading shall be disregarded.

Variance.

SEC. 777. A variance between the proof on the trial and the allegations in pleading shall be disregarded as immaterial unless the court be satisfied that the adverse party has been misled to his prejudice thereby.

Amendments

SEC. 778. The pleadings may be amended at any time before trial to supply a deficiency or omission when by such amendments substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court, by oath, that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment shall be granted. The court may also, in its descretion, require as a condition of an amendment the payment of costs to the adverse party, to be fixed by the court, not exceeding twenty dollars, but such payment shall not be required unless an adjournment is made necessary by the amendment; nor shall an amendment be allowed after a witness is sworn upon the trial when an adjournment thereby will be made necessary.

If action involves title to real property it shall be certified to district court

SEC. 779. The parties shall not be at liberty to give evidence by which the question of title to real property shall be raised on the trial before a justice; and if it appear from the plaintiff's own showing on the trial, or from the answer of the defendant, verified by his oath or that of his agent or attorney, or if it appear at any time during the trial that the determination of the action will necessarily involve the decision of the question of title to real property, the justice shall suspend all further proceedings in the action and transmit the pleadings, and a certified transcript of his own proceedings in the action, to the clerk of the district court of his county, and from the time of filing such pleadings and transcript with the clerk of the district court, shall have over the action the same jurisdiction as if it were originally commenced therein: *Provided*, That when the action is certified to the district court, upon the answer of the defendant, he shall file an undertaking, to be approved by the justice, to the effect that he will pay all costs that may be awarded against him on the trial in the district court.

If justice disqualified, action must be transferred.

SEC. 780. If at any time before the trial it appear to the satisfaction of the justice before whom the action is brought, by affidavit of either party, that such justice is a material witness for either party, or if either party make affidavit that he has reason to believe and does believe that he cannot have a fair and impartial trial before such justice, the action shall be transferred to some other justice of the same county; and in case of a jury being demanded, and affidavit of either party is made that he cannot have a fair and impartial trial on account of the bias or prejudice of the citizens of the precinct or township against him, the action shall be transferred to some other justice of the peace in the county. The justice to whom the action may be transferred by the provisions of this section shall have and exercise the same jurisdiction over the action as if it had been originally commenced before him. The justice ordering the transfer of the action to another justice, shall immediately transfer to the latter, on the payment of the costs due from the party procuring the transfer, all the papers in the action, together with a certified transcript of the proceedings that have been had in the action.

Jury.

SEC. 781. Upon the return day of the summons, if a jury be demanded, or if the justice be actually engaged in other official business, he may adjourn the trial without the consent of either party as follows:

First. When a party who is not a resident of the county is in attendance, the adjournment not to exceed twenty-four hours; when the defendant in attendance is under arrest, the adjournment not to exceed three hours.

Second. In other cases not to exceed five days.

Adjournment of trial

SEC. 782. The trial may be adjourned by consent or upon the application of either party without the consent of the other, for a period not exceeding ten days (except as provided in the next section) as follows:

First. The party asking the adjournment shall, if required by his adversary, prove by his own oath or otherwise that he cannot, for want of material testimony which he expects to procure, safely proceed to trial, and shall show in what respects the testimony expected is material, and the diligence he has used to procure it.

Second. The party asking the adjournment shall also, if required by the adverse party, consent that the testimony of any witness of the adverse party who is in attendance be taken by deposition before the justice, which shall accordingly be done, and the testimony so taken may be read on the trial with the same effect and subject to the same objections as if the witness were present; but such objections shall be made at the time of taking the deposition.

Third. The court may also require the moving party to state upon affidavit the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it is considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed. It shall appear by the affidavit of the party or otherwise that due diligence has been used to obtain the evidence wanting before a postponement of the trial is made therefor.

Time to which adjournment may be had for procuring evidence.

SEC. 783. An adjournment may be had either at the time of joining issue or at any time subsequent, to which the case may stand adjourned on application of either party for a period longer than ten days, but not to exceed one month from the time of the return of the summons, upon proof by the oath of the party, or otherwise, to the satisfaction of the justice, that such party cannot be ready for trial before the time to which he desires an adjournment, for want of material evidence, particularly describing it, and that the delay has not been made necessary by any act of negligence on his part since the action was commenced, that he has used due diligence (which shall be stated) to procure it, and has been unable to do so, and that he expects to procure the evidence at the time stated by him: *Provided,* That if the adverse party admit that such evidence would be given, and consent that it may be considered as given on the trial, or offered and overruled as improper, the adjournment shall not be had.

Undertaking on adjournment

SEC. 784. No adjournment shall be granted for a period longer than ten days upon the application of either party, except on condition that such party file an undertaking, with sureties to be approved by the justice, to the effect that they will pay to the opposite party the amount of any judgment that may be recovered against the party applying.

Dismissal.

SEC. 785. If the plaintiff fails to appear at the time set for trial, and the defendant appears and demands it, the action shall be dismissed.

Judgment if party absent

SEC. 786. If either party fails to appear at the time set for trial, or fails to make the necessary pleading or proofs on his part, the case may nevertheless proceed at the request of the party present, and judgment shall be given in conformity with the pleadings and proofs.

Demand for jury.

SEC. 787. A trial by jury shall be demanded at the time of joining issue, and shall be deemed waived if neither party then demand it; when demanded, the trial of the case shall be adjourned until a time and place fixed for the return of the jury. If neither desire an adjournment, the time and place shall be determined by the justice, and shall be within the next two days or the same day. The jury shall be summoned, upon an order of the justice, from the citizens of the city or township, and not from the by-standers.

Selection of jury.

SEC. 788. At the time appointed for the trial, the justice shall proceed to call from the jurors summoned the names of the persons to constitute the jury for the trial of the issue. The jury, by consent of the parties, may consist of any number not more than twelve nor less than six, and shall not be summoned until their legal fees for one day's service shall be paid into the hands of the justice by the party demanding the jury.

Qualification of jurors.

SEC. 789. Each juror shall be competent to serve as such in the district court. If a sufficient number of competent jurors do not attend, the justice shall direct others to be summoned from the vicinity, and not from the by-standers, sufficient to complete the jury.

Challenges.

SEC. 790. Either party may challenge peremptorily one-half of the jury. Challenge for cause may be made by either party for any cause that a challenge for cause can be made in the district court. Challenges for cause shall be tried by the justice.

CHAPTER IV.

JUDGMENT AND EXECUTION.

Sec. 791. Judgment entered with costs—when.
Sec. 792. Defendant failing to appear, judgment for plaintiff—in what case.
Sec. 793. Justice to hear evidence and decide questions of fact and law.
Sec. 794. Judgment to be rendered immediately after verdict.
Sec. 795. When action against one or more defendants.
Sec. 796. When judgment rendered exceed jurisdiction.

Sec. 797. If defendant confess judgment.
Sec. 798. When defendant subject to imprisonment to be stated in judgment.
Sec. 799. Judgment to be entered in favor of defendant—when.
Sec. 800. Justice to give transcript of judgment.
Sec. 801. Execution for enforcement of judgment—when issued.
Sec. 802. Execution—to whom directed.
Sec. 803. Officer shall proceed to execute.

Dismissal without prejudice

SEC. 791. Judgment that the action be dismissed without prejudice to a new action may be entered with costs in the following cases:

First. When the plaintiff voluntarily dismisses the action before it is finally submitted.

Second. When he fails to appear at the time set for trial, or within one hour thereafter, and the defendant appears and demands that the action be dismissed.

Third. When it is objected at the trial, and appears by the evidence, that the action is brought in the wrong county; but if the objection be taken and overruled, it shall be cause only of reversal on appeal, and shall not otherwise invalidate the judgment. If not taken at the trial, it shall be deemed waived and shall not be cause of reversal.

Default.

SEC. 792. When the defendant fails to appear and answer, judgment shall be given for the plaintiff, as follows: When a copy of the account, note, bill, or other obligation upon which the action is brought was filed with the justice at the time the summons was issued, judgment shall be given without further evidence for the sum specified in the summons.

Hearing

SEC. 793. Upon issue joined, or when the defendant fails to appear, except cases mentioned in the last section, if a trial by jury be not demanded, the justice shall hear the evidence, and decide all questions of fact and of law, and render judgment accordingly.

Entry of judgment

SEC. 794. Upon a verdict by a jury, the justice shall immediately render judgment accordingly. When the trial is by the justice, judgment shall be entered immediately after the trial, if the defendant has been arrested and is still in custody. In other cases, it shall be entered within four days after the close of the trial.

Action against joint debtors.

SEC. 795. If the action be on a contract against two or more defendants, and the summons be served on one or more but not on all, the judgment shall be entered up only against those who were served, if the contract be a several or a joint and several contract;

but if the contract be a joint contract only, the judgment shall be entered up against all the defendants, but shall only be enforced against the joint property of all and the separate property of the defendants served.

Excess over jurisdiction remitted.

SEC. 796. When the amount found due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess, and judgment may be rendered for the residue.

Offer to allow judgment.

SEC. 797. If the defendant, at any time before trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs there accrued, but if he do not accept such offer before the trial, and fail to recover in the action a sum larger than the one mentioned in the offer, he shall not recover any costs accruing after the offer was made, but the offer and failure to accept shall not be given in evidence to affect the recovery otherwise than as to costs.

Judgment in case of arrest.

SEC. 798. When a judgment is rendered in a case where the defendant is subject to arrest and imprisonment thereon, it shall be so stated in the judgment, and entered in the docket.

Costs.

SEC. 799. When the prevailing party is entitled to costs by this chapter, the justice shall add their amount to the verdict, or in case of the failure of the plaintiff to recover, or in case of the dismissal of the action, shall enter up judgment in favor of the defendant for the amount of such costs.

Transcript of judgment for filing in district court

SEC. 800. The justice, on demand of the party in whose favor judgment is rendered, shall give him a transcript thereof, which may be filed and docketed on the judgment docket in the office of the district clerk of the county where the judgment was rendered. The time of the receipt of the transcript by the district clerk shall be noted by him thereon, and entered on the docket, and from that time the judgment shall be a lien upon the real property of the defendant, the same as judgments in district courts; and executions may be issued by the district clerk, on such judgment, to the sheriff of any county of the territory, in the same manner as upon judgments rendered in the higher courts.

Judgment not lien unless transcript is filed.

No judgment rendered by a justice of the peace shall be a lien, except when a transcript is filed, as above provided; and no levy of an execution from a justice's court shall be made on real property. When such transcript is to be filed in any other county than the one in which the justice resides, such transcript shall be accompanied by the certificate of the county clerk as to the official character of the justice in the county where he resides. Such judgment shall be a lien upon and bind the lands and tenements of the judgment debtor, situated in the county where the transcript may be filed and recorded in favor of such judgment creditor, as if such judgment had been rendered in the district court of such county.

NOTE.—Act of Feb. 5th, 1876.

Execution

SEC. 801. Execution for the enforcement of judgment in a justice's court may be issued on the application of the party entitled thereto, at any time within five years from the entry of the judgment.

Execution: what it shall contain.

SEC. 802. The execution, when issued by a justice, shall be directed to the sheriff, or to a constable of the county, and subscribed by the justice issuing the same, and shall bear date the day of its delivery to the officer to be executed; it shall intelligibly refer to the judgment by stating the names of the parties, and the name of the justice before whom, and of the county where, and the time when, it was rendered, the amount of the judgment, if it be for money, and if less than the whole is due, the amount due thereon; it shall contain in like cases, similar directions to the sheriff or constable as are required in executions issued by the clerk of the district court, except as to levying on real property.

Execution: duty of officer

SEC. 803. The sheriff or constable to whom the execution is delivered, shall proceed to execute the same in the same manner as the sheriff is required to execute executions issued by the clerk of the district court, and the constable, when the execution is directed to him, shall be vested for that purpose with all the power of the sheriff, except as to levying on real property, and after issuing an execution, and either before or after return (if the same be returned unsatisfied either in whole or in part), the judgment creditor shall be entitled to an order from the justice requiring the judgment debtor to attend at a time to be designated in the order, and answer concerning his property before such justice, and the attendance of such may be enforced by the justice. On his attendance, such debtor may be examined on oath, concerning his property, and any person alleged to have in his hands property, moneys, effects, or credits of the judgment debtor, may also be required to attend and be examined, and the justice may order any property

Examination of defendant.

in the hands of the judgment debtor, or any other person, not exempt from execution, belonging to such debtor, to be applied towards the satisfaction of such judgment, and the justice may enforce such order by imprisonment until complied with; but no judgment debtor or other person shall be required to attend before any justice out of the county in which he resides

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CHAPTER V.

GENERAL PROVISIONS.

Sec. 804. Provisions of this act to apply in justices' courts, same as in district courts.

Sec. 805. Justice to keep docket.

Sec. 806. How entries to be made.

Sec. 807. Docket to be indexed.

Sec. 808. Docket to be deposited with successor.

Sec. 809. Justice may issue execution on docket of his predecessor.

Sec. 810. Justice elected to fill vacancy.

Sec. 811. Summons, execution, &c., to be filled up.

Sec. 812. In case of sickness of justice another justice may attend.

Sec. 813. Justice may depute any person to serve papers.

Sec. 814. Authority of person so deputed.

Sec. 815. Retiring constable may execute processes already begun.

Sec. 816. Justice may punish for contempt.

Sec. 817. Act for which person convicted to be put in docket.

Sec. 818. Justice to issue subpœnas—when.

Sec. 819. Depositions to be taken as in district courts.

Sec. 820. New trial.

Sec. 821. Applications made upon affidavit.

Sec. 822. Party may appeal to district court.

Sec. 823. Undertaking to be filed by party appealing.

Sec. 824. Justice to make out transcript.

Sec. 825. Party appealing failing to reduce or enlarge judgment.

Sec. 826. Appeals from justices' courts — how how tried.

Sec. 827. Stay of proceedings.

Sec. 828. Costs allowed prevailing party.

Sec. 829. Justice to receive and pay over moneys.

Sec. 830. Justice may require deposit before issuing summons.

SEC. 804. The provisions of this act, in relation to parties to actions in the district courts, and relative to practice, pleading, and trial, shall, so far as the same are applicable, and do not conflict with this title, be observed in justices' courts. Provisions applicable

SEC. 805. Every justice shall keep a book denominated a docket, in which he shall enter: Docket

First. The title of every action or proceeding.

Second. The object of the action or proceeding, and if a sum of money be claimed, the amount of the demand.

Third. The date of the summons, and the time of its return; and if an order to arrest the defendant be made, or a writ of attachment be issued, a statement of these facts.

Fourth. The time when the parties, or either of them, appear, or their non-appearance if default be made; a minute of the pleadings and motions, if in writing, referring to them, if not in writing, a concise statement of the material parts of the pleadings, and of all motions made during the trial by either party, and his decisions thereon.

Fifth. Every adjournment, stating on whose application, whether on oath, evidence, or consent, and to what time.

Sixth. The demand for a trial by jury, when the same is made, and by whom made, the order for the jury, and the time appointed for the trial, and return of the jury.

Seventh. The names of the jury who appear and are sworn, the names of all witnesses sworn, and at whose request.

Eighth. The verdict of the jury, and when received, if the jury disagree and are discharged, the fact of such disagreement and discharge.

Ninth. The judgment of the court, specifying the costs included, and the time when rendered.

Tenth. The issuing of the execution, when issued, and to whom delivered, the renewals thereof, if any, and when made, and a statement of any money paid to the justice, and when and by whom.

Eleventh. The receipt of a notice of appeal, if any be given, and of the appeal bond, if any be filed, with the amount thereof, and the names of the sureties.

Twelfth. A note of any other proceedings taken in the action or proceeding.

Entries: evidence.

SEC. 806. The several particulars of the last section specified shall be entered under the title to the action to which they relate, and at the time when they occur. Such entries in a justice's docket, or a transcript thereof certified to by the justice or his successor in office, shall be primary evidence to prove the facts so stated therein.

Index to docket.

SEC. 807. A justice shall keep an alphabetical index to his docket, in which shall be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs shall be entered in the index in the alphabetical order of the first letter of the family names.

Docket to be deposited with successor or with county clerk

SEC. 808. It shall be the duty of every justice upon the expiration of his term of office, to deposit with his successor his official dockets, as well his own as those of his predecessors, which may be in his custody, to be kept as public records. If the office of a justice become vacant by his death, removal from the township or city, or otherwise, before his successor is elected and qualified, the dockets in possession of such justice shall be deposited with the county clerk of the county, to be by him delivered to his successor in office of the justice.

Successor may issue execution

SEC. 809. Any justice with whom a docket of his predecessor is deposited, may issue execution or other process upon a judgment there entered and unsatisfied, in the same manner and with the same effect as the justice with whom the judgment was entered might have done. In case of the creation of a new county, or the change of the boundaries between two counties, any justice, in whose hands the docket of a justice, formerly acting as such within the same territory, may come, shall, for the purpose of this section, be considered the successor of said former justice.

Who deemed a successor.

SEC. 810. The justice elected to fill a vacancy shall be deemed the successor of the justice whose office became vacant before the expiration of a full term. When a full term expires the same or another person elected to take office in the same township or city from that time shall be deemed the successor.

Blanks filled.

SEC. 811. The summons, execution, and every other paper made or issued by a justice, except a subpœna, shall be filled up without a blank left to be filled by another, otherwise it shall be void.

Trial by another justice.

SEC. 812. In case of sickness or other disability, or necessary absence of a justice on a return of summons, or at any time appointed for a trial, another justice of the same county may, at his request, attend in his behalf, and shall thereupon become vested with the power for the time being, of the justice before whom the summons was returnable. In that case the proper entry of the proceedings before the attending justice, subscribed by him, shall be made in the docket of the justice before whom the summons was returnable.

Special deputy.

SEC. 813. A justice may, at the request of a party, and on being satisfied that it is expedient, specially depute any discreet person of suitable age, and not interested in the action, to serve a summons or execution with or without an order, to arrest the defendant with or without a writ of attachment. Said justice shall be liable on his official bond for all official acts of the person so deputed. Such deputation shall be in writing made on the process, and a note thereof made in the justice's docket.

Authority of deputy.

SEC. 814. The person so deputed shall have the authority of a constable in relation to the service, execution, and return of such process, and shall be subject to the same obligations.

Execution of process may be completed by retiring constable.

SEC. 815. A constable, notwithstanding the expiration of his term of office, may proceed and complete the execution of all final process which he has begun to execute, in the same manner as if he were still in office, and his sureties shall be liable to the same extent.

Punishment for contempt.

SEC. 816. A justice may punish any person guilty of a contempt of his court, as defined by this act, by fine or imprisonment, or both, but such fine shall not exceed one hundred dollars, nor imprisonment shall not exceed one day.

Acts to be specified.

SEC. 817. The acts for which the person is convicted shall be particularly specified in the justice's docket, and the judgment entered thereon.

Subpœnas and final process may be issued to any part of county.

SEC. 818. Justices of the peace may issue subpœnas in any action or proceeding in the courts held by them, and final process on any judgment recovered therein, to any part of the county.

Depositions.

SEC. 819. Depositions may be taken in the same manner, to be used in justices' courts, as they are taken to be used in the district court.

New trial.

SEC. 820. A new trial may be granted by the justice, on motion, within ten days after the entry of judgment, for any of the following causes:

First. Accident or surprise which ordinary prudence could not have guarded against.

Second. Excessive damages, appearing to have been given under the influence of passion.

Third. Insufficiency of the evidence to justify the verdict, or other decision.

Fourth. Newly-discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial.

Application and affidavit for new trial.

SEC. 821. The application shall be made upon affidavit and notice; the affidavit shall be filed with the justice, with a statement of the grounds upon which the party intends to rely. The adverse party may use counter-affidavits on the motion, provided they be filed one day previous to the hearing of the motion.

Appeal.

SEC. 822. Any party dissatisfied with a judgment rendered in a justice's court, may appeal therefrom to the district court of the county, at any time within thirty days after the rendition of the judgment. The appeal shall be taken by filing a notice of appeal with the justice, and serving a copy of the same upon the adverse party.

Undertaking.

SEC. 823. The party appealing shall file with the justice, within the time allowed for taking an appeal, an undertaking in double the amount of the judgment appealed from, or if the judgment be for the recovery of specific personal property, in double the value of such property, with sufficient sureties, and conditioned that the party appealing will pay any judgment that may be rendered against him in the district court, as well as all costs that may be awarded against him, and for the prosecution of such appeal to effect, or if the party in whose favor judgment is rendered appeals, the bond shall be conditioned for the prosecution of the appeal to effect and for the payment of all costs that may be adjudged against the appealing party. The undertaking shall be accompanied by the affidavit of the sureties that they are residents of the county, and are each worth, over and above their debts, liabilities, and property by law exempt from execution the amount specified in the undertaking, but several sureties may state that they are worth sums less than the amount stated in the undertaking besides such exemptions, if the whole amount equals the amount of two sufficient sureties.

Transcript on appeal.

SEC. 824. Upon receiving the notice of appeal and the undertaking, as provided in the last section, and payment of fees therefor, the justice shall make out a full and complete transcript from his docket of all the proceedings in the action before him, and transmit it, together with all the motions, pleadings, and all other papers belonging to the said cause, to the clerk of the district court of the county, which transcript shall be certified by such justice, within ten days after the filing of the appeal, bond, and notice of appeal; the justice may be compelled by an order of the district court entered on motion, to transmit any or all of such papers, and may be fined for neglect or refusal to transmit the same.

Costs on appeal.

SEC. 825. If the party appealing fail to reduce or enlarge the judgment appealed from ten dollars or more, or reverse the same in the district court, he shall not recover any of the costs of the appeal.

On what papers appeals shall be tried.

SEC. 826. All appeals from justices' courts shall be tried anew in the district court, on the papers filed in the justice's court, unless the court, for good cause shown, and on such terms as may be just, allow other papers to be filed in such action. Either party may demand a trial by jury in the district court. Each party shall have the benefit of all legal objections made in the justice's court.

Stay.

SEC. 827. If an execution shall have been issued on a judgment appealed from, on the filing of the appeal bond, the justice shall by order direct the officer to stay all proceedings on the same. Such officer shall, upon payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon, and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees be not paid, the officer may retain so much of the property or proceeds thereof as may be necessary to pay the same.

Costs.

SEC. 828. Costs shall be allowed the prevailing party in justices' courts.

Moneys paid to and by justice.

SEC. 829. Justices of the peace shall receive from the sheriff or constable of their (respective) counties, all moneys collected on any process or order issued by their courts respectively, and all moneys paid to them in the official capacity, and shall pay the same over to the parties entitled or authorized to receive them without delay. For a violation of this section they may be removed from their office, and shall be deemed guilty of a misdemeanor.

Security for costs.

SEC. 830. Justices of the peace may in all cases require a deposit of money or an undertaking as surety for costs of court before issuing a summons.

SECOND DIVISION.

Probate Practice Act.

CHAPTER I.

ORGANIZATION AND JURISDICTION OF PROBATE COURTS IN MONTANA.

Sec. 1. Jurisdictional powers; proceedings, how construed.
Sec. 2. Powers of probate judge at chambers.
Sec. 3. When judge may hold terms in another county.
Sec. 4. Authority by which probate judge may act in another county.
Sec. 5. When seal may and may not be affixed.
Sec. 6. County where wills may be proved and letters granted.
Sec. 7. When court of first county petitioned to have exclusive jurisdiction.

SECTION 1. The probate court has jurisdiction—

Jurisdiction of probate court

First. To open and receive proof of last wills and testaments, and to submit them to probate.

Second. To grant letters testamentary, of administration, and of guardianship, and to revoke the same.

Third. To appoint appraisers of estates of deceased persons.

Fourth. To compel executors, administrators, and guardians to render accounts.

Fifth. To order the sale of property of estates or belonging to minors.

Sixth. To order the payment of debts due from estates.

Seventh. To order and regulate all distributions and partitions of property or estates of deceased persons.

Eighth. To compel the attendance of witnesses and the production of title deeds, papers and other property of an estate or of a minor.

Ninth. To exercise the powers conferred by this act.

Tenth. To make such orders as may be necessary to the exercise of the powers conferred upon it.

The proceedings of probate courts shall be construed in the same manner and with like intendments as the proceedings of courts of general jurisdiction, and to its records, judgments, and decrees there is accorded like force and effect and legal presumptions, as to the records, orders, decrees, and judgments of of district courts.

Power of judge at chambers

Sec. 2. The judges of probate courts may, at chambers, appoint appraisers, receive inventories and accounts, to be filed in probate court; suspend the powers of executors, administrators, or guardians, in the cases allowed by law; grant special letters of administration or guardianship; approve claims and bonds, and direct the issuance from the probate courts of all writs and processes necessary in the exercise of their power.

May hold terms in another county.

Sec. 3. Any probate judge may hold terms, or portions of terms, in any other county than, as well as in, that for which he was elected, in cases of sickness of the proper judge, or to hear, try, adjudicate, and determine all causes and matters in which the probate judge of the proper county is interested or has been employed as an attorney, or is disqualified by law from trying or adjudicating.

Same.

Sec. 4. When, from any of the causes mentioned in the preceding section, a term or part of a term of a probate court cannot be held in a county by the judge thereof, the judge disqualified may, by the consent of parties to the action or proceedings, which such judge is disqualified from adjudicating, designate the county, or probate judge of some other county, to hold such term or portion of term; and if the parties fail thus to consent, a certificate of such fact of disqualification, or in case of sickness of the judge, then of the fact of such sickness, must be transmitted by the clerk of such court to the governor, who must thereupon direct some probate judge of a neighboring county to hold such term or part of term.

Seal: to what proceedings to be affixed.

Sec 5. The seal of the court need not be affixed to any proceedings therein: except—

First. To a writ.

Second. To the proof of a will or the appointment of an executor, administrator, or guardian.

Third. To the authentication of a copy of a record or other proceeding of the court, or officer thereof, for the purpose of being used in evidence in another court.

Venue for proving wills, etc

SEC. 6. Wills must be proved, and letters testamentary or of administration granted:

First. In the county of which the decedent was a resident at the time of his death, in whatever place he may have died.

Second. In the county in which the decedent may have died leaving estate therein, he not being a resident of the territory.

Third. In the county in which any part of the estate may be, the decedent having died out of the territory, and not resident thereof at the time of his death.

Fourth. In the county in which any part of the estate may be, the decedent not being a resident of the territory, and not having estate in the county in which he died.

Fifth. In all other cases, in the county where application for letters is first made.

Jurisdiction in certain cases.

SEC. 7. When the estate of decedent is in more than one county, he having died out of the territory, and not having been a resident thereof at the time of his death, or, being such non-resident, and dying within the territory, and not leaving estate in the county where he died, the probate court of that county in which application is first made for letters testamentary or of administration, has exclusive jurisdiction of the settlement of the estate.

CHAPTER II.

PROBATE OF WILLS.

Sec. 8. Duty of custodian of a will.
Sec. 9. Interested party may petition to have will proved.
Sec. 10. Petition for probate of will must show.
Sec. 11. Executor failing to petition renounces his right.
Sec. 12. Will in possession of third party.
Sec. 13. Hearing of petition and notice of.
Sec. 14. Notice, how addressed and on whom served.
Sec. 15. Powers of judge at chambers concerning wills.

Sec. 16. Proof of notice and proof of will.
Sec. 17. Who may contest will.
Sec. 18. Will admitted to probate on testimony of one witness.
Sec. 19. Olographic wills proved as other writings are.
Sec. 20. Proceedings to contest will.
Sec. 21. Trial by jury and trial by court.
Sec. 22. Special verdict; judgment; proofs to be recorded.
Sec. 23. When will contested and witnesses absent, how proved.
Sec. 24. Written evidence subscribed, perpetuated.
Sec. 25. Court being satisfied, must attach certificate of proof.
Sec. 26. Will, proof and testimony recorded by the clerk.
Sec. 27. Proved foreign wills to be allowed and recorded.
Sec. 28. When produced by interested party, what notice to be given.
Sec. 29. Foreign proved will as effective as if proved here.
Sec. 30. Will may be contested within one year after probate; petition for.
Sec. 31. Citation to show cause to issue to all parties.
Sec. 32. Trial upon citation to show cause.
Sec. 33. Probate may be annulled upon trial by jury or court.
Sec. 34. Powers and liabilities of executor on revocation.
Sec. 35. Costs on petition to revoke.
Sec. 36. Limitation to contests.
Sec. 37. Proof of lost or destroyed will.
Sec. 38. What must be proven of a lost or destroyed will.
Sec. 39. Proceedings when lost will is established.
Sec. 40. Previous administrator or executor may be restrained.
Sec. 41. May be proven within six months, petition for.
Sec. 42. When court may entertain petition.
Sec. 43. Contests conducted as in cases of written wills.

Custodian to deliver will.

SEC. 8. Every custodian of a will, within thirty days after receipt of information that the maker thereof is dead, must deliver the same to the probate court having jurisdiction of the estate, or to the executor named therein. A failure to comply with the provisions of this section makes the person failing responsible for all damages sustained by any one injured thereby.

Petition for probate of will

SEC. 9. Any executor, devisee, or legatee named in any will, or any other person interested in the estate, may, at any time after the death of the testator, petition the court having jurisdiction to have the will proved, whether the same be in writing in his possession or not, or is lost or destroyed, or beyond the jurisdiction of the territory, or a nuncupative will.

What must be shown in petition.

SEC. 10. A petition for the probate of a will must show:

First The jurisdictional facts.

Second. Whether the person named as executor consents to act, or renounces his right to letters testamentary.

Third. The names, ages, and residence of the heirs and devisees of the decedent, so far as known to the petitioner.

Fourth. The probable value and character of the property of the estate.

Fifth. The name of the person for whom letters testamentary are prayed.

No defect of form or in the statement of jurisdictional facts actually existing shall make void the probate of a will.

Effect of failure to petition.

SEC. 11. If the person named in a will as executor, for thirty days after he has knowledge of the death of the testator, and that he is named as executor, fails to petition the proper court for the probate of the will, and that letters testamentary be issued to him, he has renounced his right to letters, and the court may appoint any other competent person administrator, unless good cause for delay is shown.

Order to produce will.

SEC. 12. If it is alleged in any petition that any will is in the possession of a third person, and the court is satisfied that the allegation is correct, an order must be issued and served upon the person having possession of the will, requiring him to produce it at a time named in the order. If he has possession of the will, and neglects or refuses to produce it in obedience to the order, he may, by warrant from the court, be committed to the jail of the county, and be kept in close confinement until he produces it.

Time and notice for hearing.

SEC. 13. When the petition is filed and the will produced, the probate judge must fix a day for hearing the petition, not less than ten nor more than thirty days from the production of the will. Notice of the hearing shall be given by the clerk of the court, by publishing the same in a newspaper of the county; if there be none, then by three written or printed notices posted at three of the most public places in the county. If the notice is published in a weekly newspaper, it must appear therein on at least three different days of publication, and if in a newspaper published oftener that once a week, it shall be so published that there must be at least ten days from the first to the last day of publication, both the first and the last day being included. If the notice is by posting, it must be given at least ten days before the hearing.

Service of notice.

SEC. 14. Copies of the notice of the time appointed for the probate of the will must be addressed to the heirs of the testator resident in the territory, at their places of residence, if known to the petitioner, and deposited in the postoffice, with the postage thereon prepaid, at least ten days before the hearing. If their places of residence be not known, the copies of notice may be addressed to them and deposited in the postoffice at the county seat of the county where the proceedings are pending. A copy of the same notice must in like manner be mailed to the person named as executor, if he be not the petitioner; also, to any person named as co-executor, not petitioning, if their places of residence be known. Proof of mailing the copies of the notice must be made at the hearing. Personal service of copies of the notice at least ten days before the day of the hearing is equivalent to mailing.

Petitions received and orders made out of term time.

SEC. 15. The probate judge may, out of term time or at chambers, receive petitions for the probate of wills, and make and issue all necessary orders and writs to enforce the production of wills and the attendance of witnesses, and may appoint special terms of his court for hearing the petitions, trials of issues, and admitting wills to probate.

Proof of notice

SEC. 16. At the time appointed for the hearing, or the time to which the hearing may have been postponed, the court, unless the parties appear, must require proof that the notice has been given, which being made, the court must hear testimony in proof of the will.

Contest.

SEC. 17. Any person interested may appear and contest the will. Devisees, legatees, or heirs of an estate may contest the will, through their guardians, or attorneys appointed by themselves or by the court for that purpose; but a contest made by an attorney appointed by the court, does not bar a contest after probate by the party so represented, if commenced within the time provided in this chapter; nor does the non-appointment of an attorney by the court of itself invalidate the probate of a will.

If no contest one witness sufficient.

SEC. 18. If no person appears to contest the probate of a will, the court may admit it to probate on the testimony of one of the subscribing witnesses only, if he testifies that the will was executed in all particulars as required by law, and that the testator was of sound mind at the time of its execution.

Olographic will

SEC. 19. An olographic will may be proved in the same manner that other writings are proved.

Issues how framed.

SEC. 20. If any one appears to contest the will, he must file written grounds of opposition to the probate thereof, and serve a copy on the petitioner and other residents of the county interested in the estate, any one or more of whom may demur thereto to any of the grounds of demurrer provided for in the civil practice act of this territory applicable thereto. If the demurrer is sustained, the court must allow the contestant a reasonable time, not exceeding ten days, within which to amend his written opposition. If the demurrer is overruled, the petitioner and others interested may jointly or separately answer the contestant's grounds, traversing or otherwise obviating or avoiding the objections. Any issues of fact thus raised, involving: 1, the competency of the decedent to make a last will and testament; 2, the freedom of the decedent, at the time of the execution of the will, from duress, menace, fraud, or undue influence; 3, the due execution and attestation of the will by the decedent or subscribing witnesses; or 4, any other substantial grounds affecting the validity of the will—must, on request of either party in writing (filed three days prior to the day set for the hearing), be tried by a jury. If no jury is demanded, the court must try and determine the issues joined.

On the trial the contestant is plaintiff, and the petitioner is defendant.

Trial by jury.

SEC. 21. When a jury is demanded, the probate court must summon and impanel a jury to try the case in the manner provided for summoning and impaneling trial juries in courts of record, and the trial must be conducted in accordance with the provisions of the civil practice act for trials of issues of fact. A trial by the court must be conducted as provided in said civil practice act in cases of trials by the court.

Special verdict.

SEC. 22. The jury, after hearing the case, must return a special verdict upon the issues submitted to them by the court; upon which the judgment of the court must be rendered, either admitting the will to probate or rejecting it. In either case the proofs of the subscribing witnesses must be reduced to writing. If the will is admitted to probate, the judgment, will, and proofs must be recorded.

Witnesses in case of contest.

SEC. 23. If the will is contested, all the subscribing witnesses who are present in the county, and who are of sound mind, must be produced and examined, and the death, absence, or insanity of any of them must be satisfactorily shown to the court. If none of the subscribing witnesses reside in the county at the time appointed for proving the will, the court may admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will; and, as evidence of the execution, it may admit proof of the handwriting of the testator and of the subscribing witnesses, or any of them.

Perpetuation of testimony.

SEC. 24. The testimony of each witness, reduced to writing and signed by him, shall be good evidence in any subsequent contests concerning the validity of the will, or the sufficiency of the proof thereof, if the witness be dead or has permanently removed from the territory.

Certificate.

SEC. 25. If the court is satisfied upon the proof taken, or from the facts found by the jury, that the will was duly executed, and that the testator, at the time of its execution, was of sound and disposing mind, and not acting under duress, menace, fraud, or undue influence, a certificate of the proof and the facts found, signed by the probate judge, and attested by the seal of the court, must be attached to the will.

Record of will and certificate

SEC. 26. The will and certificate of the proof thereof, together with all the testimony taken, must be filed by the clerk, and recorded by him in a book to be provided for the purpose.

Will proved in other jurisdiction

SEC. 27. Every will duly proved and allowed in any other state or territory of the United States, or in any foreign country or state, may be allowed and recorded in the probate court of any county in which the testator shall have left any estate.

Probate of copy of will

SEC. 28. When a copy of a will and the probate thereof, duly authenticated, shall be produced by the executor, or by any other person interested in the will, with a petition for letters, the same must be filed and the court or judge must appoint a time for the hearing: notice whereof must be given as hereinbefore provided for an original petition for the probate of a will.

Hearing.

SEC. 29. If, on the hearing, it appears upon the face of the record that the will has been proved, allowed, and admitted to probate, in any other state or territory of the United States, or in any foreign country, and that it was executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, or in conformity with the laws of this territory, it must be admitted to probate, and have the same force and effect as a will admitted to probate in this territory, and letters testamentary, or of administration issued thereon

Contest within one year

SEC. 30. When a will has been admitted to probate, any person interested may, at any time within one year after such probate, contest the same, or the validity of the will. For that purpose he must file in the court in which the will was proved a petition, in writing, containing his allegations against the validity of the will, or against the sufficiency of the proof, and praying that the probate may be revoked.

Citation

SEC. 31. Upon filing the petition a citation must be issued to the executors of the will, or to the administrators, with the will annexed, and to all the legatees and devisees mentioned in the will, and heirs residing in the territory, so far as known to the petitioner—or to their guardians, if any of them are minors; or to their personal representatives, if any of them are dead—requiring them to appear before the court, on some day of a regular term therein specified, to show cause why the probate of the will should not be revoked.

Trial.

SEC. 32. At the time appointed for showing cause, or at any time to which the hearing is postponed, personal service of the citations having been made upon any persons named therein, the court must proceed to try the issues of fact joined in the same manner as in an original contest of a will.

Trial by jury.

SEC. 33. In all cases of petitions to revoke the probate of a will, wherein the original probate was granted without a contest, on written demand of either party, filed three days prior to the hearing, a trial by jury must be had, as in cases of the contest of an original petition to admit a will to probate. If, upon hearing the proofs of the parties, the jury shall find, or, if no jury is had, the court shall decide, that the will is for any reason invalid, or that it is not sufficiently proved to be the last will of the testator, the probate must be annulled and revoked.

Revocation.

SEC. 34. Upon the revocation being made the powers of the executor or administrator, with the will annexed, must cease; but such executor or administrator shall not be liable for any act done in good faith previous to the revocation.

Costs

SEC. 35. The fees and expenses must be paid by the party contesting the validity or probate of the will, if the will in probate be confirmed. If the probate is revoked, the costs must be paid by the party who resisted the revocation, or out of the property of the decedent, as the court directs.

If no contest probate is conclusive.

SEC. 36. If no person, within one year after the probate of a will, contest the will or the validity thereof, the probate of the will is conclusive; saving to infants, and persons of unsound mind, a like period of one year after their respective disabilities are removed.

Proof of lost will.

SEC. 37. Whenever any will is lost or destroyed, the probate court must take proof of the execution and validity thereof, and establish the same; notice to all persons interested being first given, as prescribed in regard to proofs of wills in other cases. All the testimony given must be reduced to writing, and signed by the witnesses.

Restrictions as to lost will

SEC. 38. No will shall be proved as a lost or destroyed will unless the same is proved to have been in existence at the time of the death of the testator, or is shown to have been fraudulently destroyed in the lifetime of the testator; nor unless its provisions are clearly and distinctly proved by at least two credible witnesses.

Certificate.

SEC. 39. When a lost will is established, the provisions thereof must be distinctly stated and certified by the probate judge, under his hand and the seal of the court; and the certificate, together with the testimony upon which it is founded, must be filed and recorded as other wills are filed and recorded; and letters testamentary or of administration, with the will annexed, must be issued thereon, in the same manner as upon will produced and duly proved. The testimony must be reduced to writing, signed, certified, and filed as in other cases, and shall have the same effect as evidence, as provided in section 20 of this chapter.

Executors or administrators restrained

SEC. 40. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration are granted on the estate of the testator, or letters testamentary of any previous will of the testator are granted, the court may restrain the administrators or executors so appointed from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will.

Nuncupative wills.

SEC. 41. Nuncupative wills may, at any time within six months after the testamentary words are spoken by the decedent, be admitted to probate on petition and notice as provided in Chapter II, of this act. The petition, in addition to the jurisdictional facts, must allege that the testamentary words, or the substance thereof, were reduced to writing within thirty days after they were spoken, which writing must accompany the petition.

Nuncupative wills: hearing petition.

SEC. 42. The probate court must not receive or entertain a petition for the probate of a nuncupative will until the lapse of fourteen days from the death of the testator, nor must such petition at any time be acted on until the testamentary words are, or their substance is, reduced to writing and filed with the petition, nor until the surviving husband or wife (if any) and all the other persons, resident in the territory or county, interested in the estate, are notified as hereinbefore provided.

Contests.

SEC. 43. Contests of the probate of nuncupative wills, and appointments of executors and administrators of the estate devised thereby, must be had, conducted, and made as hereinbefore provided in cases of the probate of written wills.

CHAPTER III.

LETTERS TESTAMENTARY AND OF ADMINISTRATION.

Sec. 44. Letters to executors; must qualify.
Sec. 45. Who incompetent to act as executor; letters with the will annexed.
Sec. 46. Objection to executors and petition for administration.
Sec. 47. Effect of marriage when woman appointed executrix.
Sec. 48. On death of executor how administered.
Sec. 49. In case of executor be a minor or absent from the territory.

Sec. 50. When one or a majority of executors or administrators may act.
Sec. 51. Letters and powers of administrators with the will annexed.
Sec. 52. Form of letters testamentary.
Sec. 53. Form of letters with will annexed.
Sec. 54. Form of letters of administration.
Sec. 55. To whom granted and who entitled to.
Sec. 56. Preference where persons equally entitled.
Sec. 57. When court to exercise its discretion in appointing.
Sec. 58. Letters granted to guardian of minor.
Sec. 59. Who incompetent to serve.
Sec. 60. Marriage disqualifies a woman..
Sec. 61. Requisites of petition; when subsequent proceedings not void if petition not perfect.
Sec. 62. Letters may be granted at regular or special term.
Sec. 63. Notice of hearing application.
Sec. 64. On what grounds petition contested and counter petition.
Sec. 65. Order of proceeding on the hearing.
Sec. 66. Conclusive evidence of notice.
Sec. 67. Upon failure of parties having better right to apply, letters must be granted to any applicant.
Sec. 68. What must be shown before letters be granted.
Sec. 69. Letters granted to any one upon request of person entitled.
Sec. 70. Letters revoked on petition of relative therefor.
Sec. 71. Citation to administrator in such case.
Sec. 72. Hearing and duty of court.
Sec. 73. May be revoked on petition of husband or wife.
Sec. 74. Oath of administrator or executor; to be recorded.
Sec. 75. Bond of administrator or executor.
Sec. 76. Additional bond upon sale of real estate.
Sec. 77. Condition of bond.
Sec. 78. When more than one, each must give bond.
Sec. 79. Bond not void until whole penalty is exhausted.
Sec. 80. Justification of sureties.
Sec. 81. Before approving bond, judge may examine sureties.

Sec. 82. When sufficient surety not given right of party to administer ceases.
Sec. 83. Provisions when will exempts executor from giving bond.
Sec. 84. Any party interested may petition for further security.
Sec. 85. Judge may order citation to issue in such case.
Sec. 86. Hearing and order for further security.
Sec. 87. Upon failure, letters revoked.
Sec. 88. Judge may suspend powers of executor or administrator.
Sec. 89. Judge on his own motion may cite, and require further security.
Sec. 90. How surety may be released from future liability.
Sec. 91. Order releasing surety.
Sec. 92. Letters revoked upon failure to give new sureties.
Sec. 93. Applications authorized by preceding nine sections may be made in vacation.
Sec. 94. Liability of principal and surety.
Sec. 95. In what cases special administrators appointed and their powers.
Sec. 96. Order appointing and letters of.
Sec. 97. Judge to prefer those entitled, but no appeal allowed.
Sec. 98. Bond, oath, and letters of special administrator.
Sec. 99. Duties, powers, and liability of special administrator.
Sec. 100. When his powers and duties cease.
Sec. 101. Must render an account on oath.
Sec. 102. Letters revoked if will found after granting.
Sec. 103. In such case, power of executor or administrator with will annexed.
Sec. 104. Remaining executor or administrator to complete when colleague becomes incapacitated.
Sec. 105. When all become disqualified new ones appointed.
Sec. 106. Administrator or executor may resign or be removed, they nor their sureties not discharged.
Sec. 107. Acts of valid and binding until revocation of letters.
Sec. 108. Transcript of record the same effect in evidence as letters.

Sec. 109. Court disqualified to grant letters when judge interested in estate.

Sec. 110. In which case proceedings transferred to adjoining county.

Sec. 111. Transfer not to affect rights of any persons entitled to letters. When another judge is elected case may be sent back.

Sec. 112. Hearing of motion and proceedings when ordered back.

Sec. 113. Causes for which powers of administrator or executor may be suspended.

Sec. 114. To be cited to show cause and may be removed.

Sec. 115. Hearing and pleadings in such case.

Sec. 116. Concealed or absent administrator or executor may be served by publication.

Sec. 117. Attendance compelled by attachment, and examined under oath.

Letters to be issued.

SEC. 44. The court admitting a will to probate, after the same is proved and allowed, must issue letters thereon to the persons named therein as executors, who are competent to discharge the trust, who must appear and qualify, unless objection is made, as provided in section 41 of this act.

Persons not competent as executor

SEC. 45. No person is competent to serve as executor, who, at the time the will is admitted to probate, is:

First. Under the age of majority.

Second. Convicted of an infamous crime.

Third. Adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity, or who is absent from or resides out of the territory.

If the sole executor, or all the executors, are incompetent, or renounce or fail to apply for letters, or to appear and qualify, letters of administration with the will annexed must be issued.

Objections to letters.

SEC. 46. Any person interested in a will may file objections in writing to granting letters testamentary to the persons named as executors, or any of them, and the objections must be heard and determined by the court. A petition may at the same time be filed for letters of administration with the will annexed.

Married woman. See sec. 60

SEC. 47. When an unmarried woman, appointed executrix, marries, her authority is extinguished. When a married woman is named as executrix, she may be appointed and serve in every respect as a *feme sole.*

No succession as to executors

SEC. 48. No executor of an executor shall, as such, be authorized to administer on the estate of the first testator, but on the death of the sole or surviving executor of any last will, letters of administration with the will annexed, of the estate of the first testator left unadministered, must be issued.

Absent or minor executor

SEC. 49. Where a person absent from the territory, or a minor, is named executor, if there is another executor who accepts the trust and qualifies, the latter may have letters testamentary and administer the estate until the return of the absentee, or the majority of the minors, who may then be admitted a joint executor. If there is no other executor, letters of administration with the will annexed must be granted, but the court may, in its discretion, revoke them on the return of the absent executor or the arrival of the minor at the age of majority.

Act of part of executors valid.

SEC. 50. When all the executors named are not appointed by the court, those appointed have the same authority to perform all acts and to discharge the trust required by the will as effectually for every purpose as if all were appointed and should act together. Where there are two executors or administrators, the act of one alone shall be effectual if the other is absent from the territory, or laboring under any legal disability from serving, or if he has given his co-executors or co-administrators authority, in writing, to act for both; and where there are more than two executors or administrators, the act of the majority shall be valid.

Letters with will annexed.

SEC. 51. Administrators with the will annexed have the same authority over the estates which executors named in the will would have, and their acts are as effectual for all purposes. Their letters must be signed by the clerk of the court, and bear the seal of the court.

Form of letters testamentary.

SEC. 52. Letters testamentary must be substantially in the following form:

"*Territory of Montana, County of*———:

"The last will of A B, deceased, a copy of which is hereto annexed, having been proved and recorded in the probate court of the county of ———, C D, who is named therein, is hereby appointed executor.

"Witness, G H, clerk of said county, with the seal of said court affixed, this the —— day of ——, A. D. 18—.

"By order of the court.

[L. S.] "G H, *Clerk.*"

Form of letters with will annexed.

SEC. 53. Letters of administration with the will annexed must be substantially in the following form:

"*Territory of Montana, County of* ———:

"The last will of A B deceased, a copy of which is hereto annexed, having been proved and recorded in the probate court of the county of ———, and there being no executor named in said will (or as the case may be), C D is hereby appointed administrator with the will annexed.

"Witness, G H, clerk of said court, with the seal thereof affixed, this the —— day of ——, A. D. 18—.

"By order of the court.

[L. S.] "G H, *Clerk.*"

Form of letters of administration.

SEC. 54. Letters of administration must be signed by the clerk, under the seal of the court, and substantially in the following form:

"*Territory of Montana, County of* ———:

"C D is hereby appointed administrator of the estate of A B, deceased.

"Witness, G H, clerk of the probate court of said county, with seal thereof affixed, this the —— day of ——, A. D. 18—.

"By order of court.

[L. S.] "G H, *Clerk.*"

Administration: to whom granted.

SEC. 55. Letters of administration on the estate of a person dying intestate must be granted to some one or more of the persons hereinafter mentioned, who are respectively entitled thereto, in the following order:

First. The surviving husband or wife, or some competent person whom he or she may request to have appointed.

Second. The children.

Third. The father and mother.

Fourth. The brothers.

Fifth. The sisters.

Sixth. The grandchildren.

Seventh. The next of kin entitled to share in distribution of the estate.

Eighth. The public administrator.

Ninth. The creditors.

Tenth. Any person legally competent.

If the decedent was a member of a co-partnership, at the time of his death the surviving partner must in no instance be appointed administrator of the estate; *And provided further,* That no person who is not a resident of this territory shall be appointed administrator. It is further provided that if no petition for letters of administration be made on or before the first day of the second term of the probate court, after the death of the decedent by some one as mentioned in this section, the probate judge shall issue letters of administration to the public administrator, who shall proceed to administer said estate.

NOTE—Section 55 from act of Feb. 8, 1887.

Preference in certain cases

SEC. 56. Of several persons claiming and equally entitled to administer, males must be preferred to females, and relatives of the whole blood to those of the half blood.

Letters to one or more persons.

SEC. 57. When there are several persons equally entitled to the administration, the court may grant letters to one or more of them; and when a creditor is claiming letters, the court may, in its discretion, at the request of another creditor, grant letters to any other person legally competent.

Letters to minor's guardian.

SEC. 58. If any person entitled to administration is a minor, letters must be granted to his or her guardian, or any other person entitled to letters of administration, in the discretion of the court.

Persons not competent as administrator

SEC. 59. No person is competent to serve as administrator or administratrix, who, when appointed, is—

First. Under the age of majority.

Second. Convicted of an infamous crime.

Third. Adjudged by the court to be incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity.

Married woman. See sec. 47.

SEC. 60. A married woman may be an executrix, administratrix, guardian or trustee, and may bind herself and the estate she represents without any act or assent on the part of her husband.

NOTE—Section 60 from act of March 7th. 1887.

Petition for letters.

SEC. 61. Petitions for letters of administration must be in writing, signed by the applicant, or his attorney, and filed with the clerk of the court, stating the facts, to give the court jurisdiction of the case, and when known to the applicant, he must state the names, ages, and residence of the heirs of the decedent, and the value and character of the property. If the jurisdictional facts existed, but are not fully set forth in the petition, and afterwards proved in the course of administration, the decree or order of administration, and subsequent proceedings, are not void for want of such jurisdictional averments.

Letters: when granted

SEC. 62. Letters of administration may be granted at a regular term of court, or at a special term appointed by the judge for the hearing of the application.

Notice

SEC. 63. When a petition praying for letters of administration is filed, the clerk must give notice thereof by causing notices to be posted in at least three public places in the county, one of which must be at the place where the court is held, containing the name of the decedent, the name of the applicant, and term of court at which the application will be heard. Such notice must be given at least ten days before the hearing.

Contest

SEC. 64. Any person interested may contest the petition by filing written opposition thereto on the ground of incompetency of the applicant, or may assert his own right to the administration, and pray that letters may be issued to himself. In the latter case the contestant must file a petition and give the notice required for the original petition, and the court must hear the two petitions together.

Hearing.

SEC. 65. On the hearing, it being first proved that notice has been given as herein required, the court must hear the allegations and proofs of the parties, and order the issuing of letters of administration to the party best entitled thereto.

Entry of notice given

SEC. 66. An entry in the minutes of the court that the required proof was made and notice given shall be conclusive evidence of the fact of such notice.

Letters to other than applicant.

SEC. 67. Letters of administration must be granted to any applicant, though it appears that there are other persons having better rights to the admintration, when such person fail to appear and claim the issuing of letters to himself.

Proof.

SEC. 68. Before letters of administration are granted on the estate of any person who is represented to have died intestate, the fact of his dying intestate must be proved by the testimony of the applicant or others; and the court may also examine any other person concerning the time, place, and manner of his death, the place of his residence at the time, the value and character of his property, and whether or not the decedent left a will, and may compel any person to attend as a witness for that purpose.

Letters upon request if person entitled.

SEC. 69. Administration may be granted to any one or more competent persons, although not entitled to the same, at the written request of the person entitled, filed in court.

Revocation in certain cases.

SEC. 70. When letters of administration have been granted to any person other than the surviving husband or wife, child, father, mother, brother, or sister of the intestate, any one of them may obtain the revocation of the letters, and be entitled to the administration, by presenting to the probate court a petition praying the revocation, and that letters of administration may be issued to him.

Citation

SEC. 71. When such petition is filed, the clerk must, in addition to the notice provided in section 57, issue a citation to the administrator to appear and answer the same at the time appointed for the hearing.

Hearing.

SEC. 72. At the time appointed, the citation having been duly served and returned, the court must proceed to hear the allegations and proofs of the parties; and if the right of the applicant is established, and he is competent, letters of administration must be granted to him, and the letters of the former administrator revoked.

Revocation in favor of prior right.

SEC. 73. The surviving husband or wife, when letters of administration have been granted to a child, father, brother, or sister of the intestate, or any of such relatives, when letters have been granted to any other of them, may assert his prior right and obtain letters of administration, and have the letters before granted revoked in the manner prescribed in the three preceding sections.

Oath.

SEC. 74. Before letters testamentary or of administration are issued to the executor or administrator, he must take and subscribe an oath before some officer authorized to administer oaths, that he will perform, according to law, the duties of executor or administrator; which oath must be attached to the letters.

Record.

All letters testamentary and of administration issued to, and all bonds executed by, executors or administrators, with the affidavits and certificates thereon, must be forthwith recorded by the clerk of the court having jurisdiction of the estates in books to be kept by him in his office for that purpose.

SEC. 75. Every person to whom letters testamentary or of administration are directed to issue must, before receiving them, execute a bond to the territory of Montana, with two or more sufficient sureties to be approved by the probate judge. The penalty must not be less than twice the value of the personal property and twice the probable value of the annual rents, profits, and issues of the real property belonging to the estate, which values must be ascertained by the probate judge by examining, on oath, the party applying, and any other persons.

Bond.

SEC. 76. The probate judge must require an additional bond whenever the sale of any real estate belonging to an estate is ordered by him; but no such additional bond must be required when it satisfactorily appears to the court that the penalty of the bond given before receiving letters, or of any bond given in the place thereof, is equal to twice the value of the personal property remaining in, or that will come into, the possession of the executor or administrator, including the annual rents, profits, and issues of real estate, and twice the probable amount to be realized on the sale of the real estate to be sold.

Additional bond.

SEC. 77. The bond must be conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law.

Condition of bond

SEC. 78. When two or more persons are appointed executors or administrators, the probate judge must require and take a separate bond from each of them.

Separate bond.

SEC. 79. The bond shall not be void upon the first recovery, but may be sued and recovered upon from time to time, by any person aggrieved in his own name, until the whole penalty is exhausted.

More than one recovery on bond

SEC. 80. In all cases where bonds or undertakings are required to be given, under this title, the sureties must justify thereon, in the same manner and in like amounts, as required in cases of appeal to the supreme court in the civil practice act; and the certificate thereof must be attached to, and filed and recorded with, the bond or undertaking.

Justification of sureties

All such bonds and undertakings must be approved by the probate judge, before being filed or recorded.

Bond to be approved and recorded.

SEC. 81. Before any probate judge approves any bond required under this title, and after its approval, he may, of his own motion, or upon the motion of any person interested in the estate, supported by affidavit that the sureties, or some one or more of them, are not worth as much as they have justified to, order a

Additional security

citation to issue requiring such sureties to appear before him at a designated time and place, to be examined touching their property and its value; and the judge must, at the same time, cause a notice to be issued to the executor or administrator, requiring his appearance on the return of the citation; and on its return he may examine the sureties, and such witnesses as may be produced, touching the property of the sureties and its value; and if, upon such examination, he is satisfied that the bond is insufficient, he must require sufficient additional security.

If security not given another appointed.

SEC. 82. If sufficient security is not given within the time fixed by the judge's order, the right of such executor or administrator to the administration shall cease, and the person next entitled to the administration on the estate, who will execute a sufficient bond, must be appointed to the administration.

No bond if will so provides

SEC. 83. When it is expressly provided in the will that no bond shall be required of the executor, letters testamentary may issue, and sales of real estate be made and confirmed, without any bond, unless the court, for good cause, require one to be executed; but the executor may at any time afterwards, if it appear from any cause necessary or proper, be required to file a bond as in other cases.

Further security.

SEC. 84. Any person interested in an estate may, by verified petition, represent to the probate judge that the sureties of the executor or administrator thereof have become or are becoming insolvent, or that they have removed or are about to remove from the territory, or, from any other cause, that the bond is insufficient, and ask that further security be required.

Citation

SEC. 85. If the probate judge is satisfied that the matter requires investigation, a citation must be issued to the executor or administrator, requiring him to appear at a time and place to be therein specified, to show cause why he should not give further security. The citation must be served personally on the executor or administrator, at least five days before the return day. If he has absconded, or cannot be found, it may be served by leaving a copy of it at his place of residence, or by such publication as the court or judge may order.

Hearing and order

SEC. 86. On the return of the citation, or at such other time as the judge may appoint, he must proceed to hear the proofs and allegations of the parties. If it satisfactorily appears that the security is from any cause insufficient, he may make an order requiring the executor or administrator to give further security, or to file a new bond in the usual form, within a reasonable time—not less than five days.

Letters revoked

SEC. 87. If the executor or administrator neglects to comply with the order within the time prescribed, the judge must, by order, revoke his letters, and his authority must thereupon cease.

In case of waste

SEC. 88. When a petition is presented, praying that an executor or administrator be required to give further security, or to give bond, if, by the terms of the will, no bond was originally required, and it is alleged, on oath, that the executor or administrator is wasting the property of the estate, the judge may, by order, suspend his powers until the matter can be heard and determined.

Further security

SEC. 89. When it comes to his knowledge that the bond of any executor or administrator is from any cause insufficient, the probate judge, without any application, must cause him to be cited to appear and show cause why he should not give further security; and must proceed thereon as upon the application of any person interested.

Surety may apply for release.

SEC. 90. Where a surety of any executor or administrator desires to be released from responsibility on account of future acts, he may make application to the probate court or judge for relief. The court or judge must cause a citation to the executor or administrator to be issued, and served personally, requiring him to appear at a time and place to be therein specified, and to give other security; if he has absconded, left, or removed from the territory, or if he cannot be found after due diligence and inquiry, service may be made as provided in section 85.

Surety released.

SEC. 91. If new sureties be given to the satisfaction of the judge, he may thereupon make an order that the sureties who applied for relief shall not be liable on their bond for any subsequent act, default, or misconduct of the executor or administrator.

Letters revoked

SEC. 92. If the executor or administrator neglects or refuses to give new sureties, to the satisfaction of the judge, on the return of the citation, or within such reasonable time as the judge shall allow, unless the surety making the application shall consent to a longer extension of time, the court or judge, must, by order, revoke his letters.

Applications may be heard out of term time.

SEC. 93. The applications authorized by the nine preceeding sections of this chapter may be heard and determined out of term time.

All orders made therein must be entered upon the minutes of the court.

Liability on bond.

SEC. 94. The liability of principal and sureties upon the bond of an executor, administrator or guardian, is in all cases to pay in the kind of money or currency in which the principal is legally liable.

Special administrator

SEC. 95. When there is delay in granting letters testamentary or of administration, from any cause, or when such letters are granted irregularly, or no sufficient bond is filed as required, or when no application is made for such letters, or when an administrator or executor dies or is suspended or removed, the probate judge must appoint a special administrator to collect and take charge of the estate of the decedent, in whatever county or counties the same may be found, and to exercise such other powers as may be necessary, for the preservation of the estate, or he may direct the public administrator of his county to take charge of the estate.

Special letters.

SEC. 96. The appointment may be made out of term time, and without notice, and must be made by entry upon the minutes of the court specifying the powers to be exercised by the administrator. Upon such order being entered, and after the person appointed has given bond, the clerk must issue letters of administration to such person in conformity with the order.

Preference as to special administrator.

SEC. 97. In making the appointment of a special administrator, the probate judge must give preference to the person entitled to letters testamentary or of administration, but no appeal must be allowed from the appointment.

Bond

SEC. 98. Before any letters issue to any special administrator, he must give bond in such sum as the probate judge may direct, with sureties to the satisfaction of the judge, conditioned for the faithful performance of his duties; and he must take the usual, oath, and have the same endorsed on his letters.

Duty of special administrators

SEC. 99. The special administrator must collect and preserve for the executor or administrator all the goods, chattels, debts, and effects of the decedent, all incomes, rents, issues, and profits, claims and demands of the estate; must take the charge and management of, enter upon and preserve from any damage, waste, and injury, the real estate, and for any such and all necessary purposes, may commence and maintain or defend suits and other legal proceedings, as an administrator; he may sell such perishable property as the probate court may order to be sold, and exercise such other powers as are conferred upon him by his appointment; but in no case is he liable to an action by any creditor on a claim against the decedent.

Special administrator, when powers cease.

SEC. 100. When letters testamentary or of administration on the estate of the decedent have been granted, the powers of the special administrator cease, and he must forthwith deliver to the executor or administrator all the property and effects of the decedent in his hands; and the executor or administrator may prosecute to final judgment any suit commenced by the special administrator.

Account

SEC. 101. The special administrator must render an account, on oath, of his proceedings, in like manner as other administrators are required to do.

Powers of administrator cease if will is found

SEC. 102. If, after granting letters of administration on the ground of intestacy, a will of the decedent is duly proved and allowed by the court, the letters of administration must be revoked, and the powers of administrator shall cease, and he must render an account of his administration within such time as the court shall direct.

Powers of executor.

SEC. 103. In such case the executor, or the administrator with the will annexed, is entitled to demand, sue for, recover, and collect all the rights, goods, chattels, debts, and effects of the decedent remaining unadministered, and may prosecute to final judgment any suit commenced by the administrator before the revocation of his letters of administration.

If one executor, etc. dies, etc., remainder shall act

SEC. 104. In case any one of the several executors or administrators, to whom letters are granted, dies, becomes lunatic, is convicted of an infamous crime, or otherwise becomes incapable of executing the trust, or in case the letters testamentary or of administration are revoked or annulled with respect to any one executor or administrator, the remaining executor or administrator must proceed to complete the execution of the will or administration.

Letters with will annexed

SEC. 105. If all such executors or administrators die or become incapable, or the power and authority of all of them is revoked, the probate court must issue letters of administration with the will annexed, or otherwise, to the widow, or next of kin, or others, in the same order and manner as is directed in relation to original letters of administration. The administrators so appointed must give bond in the like penalty, with like sureties and conditions, as hereinbefore required of administrators, and shall have the like power and authority.

Resignation of executor or administrator.

SEC. 106. Any executor or administrator may, at any time, by writing filed in the probate court, resign his appointment, having first settled his accounts, and delivered up all the estate to the person whom the court shall appoint to receive the same. If, however, by reason of any delays in such settlement and delivering up of the estate, or for any other cause, the circumstances of the estate, or the right of those interested therein, require it, the court may, at any time before settlement of accounts and delivering up of the estate is completed, revoke the letters of such executor or administrator, and appoint in his stead an administrator, either special or general, in the same manner as is directed in relation to original letters of administration. The liability of the outgoing executor or administrator, or of the sureties on his bond, shall not be in any manner discharged, released, or affected by such appointment or resignation.

Appointment of successor.

Liability of out-goer

Acts valid until power is revoked.

SEC. 107. All acts of an executor or administrator, as such, before the revocation of his letters testamentary, or of administration, are as valid, to all intents and purposes, as if such executor or administrator had continued lawfully to execute the duties of his trust.

Transcript of court minutes to be evidence.

SEC. 108. A transcript from the minutes of the court, showing the appointment of any person as executor or administrator, together with the certificate of the clerk, under his hand and the seal of his court, that such person has given bond and been qualified, and that letters testamentary or of administration have been issued to him, and have not been revoked, shall have the same effect in evidence as the letters themselves.

Judge not to act, when.

SEC. 109. No probate court shall admit to probate any will, or grant letters testamentary or of administration, in any case where the judge thereof is interested as next of kin to the decedent, or as a legatee or devisee under the will, or when he is named as executor or trustee in the will, or as a witness thereto, or is in any other manner interested or disqualified from acting.

If judge disqualified proceedings to be transferred.

SEC. 110. When a petition is filed in the probate court, praying for admission to probate of a will, or for granting letters testamentary or of administration, or when proceedings are pending in the probate court for the settlement of an estate, and the presiding judge of the court is disqualified to act from any cause, upon his own or the motion of any person interested in the estate, he must make an order transferring the proceeding to the probate court of an adjoining county, and the clerk of the court ordering the transfer must transmit to the clerk of the court to which the proceeding is ordered to be transferred, a certified copy of the order, and all papers on file in his office in the proceeding; and thereafter the probate court to which the proceeding is transferred shall exercise the same authority and jurisdiction over the estate, and all matters relating to the administration thereof, as if it had original jurisdiction of the estate.

Transfer does not affect right to administer

SEC. 111. The transfer of a proceeding from one court to another, as provided for in the preceding section, shall not affect the right of any person to letters testamentary or of administration on the estate transferred, but the same persons are entitled to letters testamentary or of administration on the estate, in the order hereinbefore provided. If, before the administration is closed of any estate so transferred as herein provided, another person is elected or appointed and qualified as probate judge of the county wherein such proceeding was originally commenced, who is not disqualified to act in the settlement of the estate, and the causes for which the proceeding was transferred no longer exist, any person interested in the estate may have the proceeding returned to the court from which it was originally transferred, by filing a petition setting forth these facts, and moving the court therefor.

Re-transfer.

Proceedings to be returned to original court.

SEC. 112. On hearing the motion, if the facts required by the preceding section to be set out in the petition are satisfactorily shown, and it further appears to the court that the convenience of parties interested would be promoted by such change, the judge must make an order transferring the proceeding back to the probate court where it was originally commenced; and the clerk of the court ordering the transfer must transmit to the clerk of the court in which the proceeding was originally commenced, a certified copy of the order, and all the original papers on file in his office in the proceeding, and the court where the proceeding was originally commenced shall thereafter have jurisdiction and power to make all necessary orders and decrees to close up the administration of the estate.

Powers of executor, etc., may be suspended

SEC. 113. Whenever the probate judge has reason to believe, from his own knowledge or from credible information, that any executor or administrator has wasted, embezzled, or mismanaged, or is about to waste or embezzle, the property of the estate committed to his charge, or has committed, or is about to commit, a fraud upon the estate, or is incompetent to act, or has permanently removed from the territory, or has wrongfully neglected the estate, or has long neglected to perform any act as such executor or administrator, he must, by an order entered upon the minutes of the court, suspend the powers of such executor or administrator until the matter is investigated.

Notice and citation

SEC. 114. When such suspension is made, notice thereof must be given to the executor or administrator, and he must be cited to appear and show cause why his letters should not be revoked. If he fail to appear in obedience to the citation, or, if appearing, the court is satisfied that there exists cause for his removal, his letters must be revoked, and letters of administration granted anew, as the case may require.

Issues.

SEC. 115. At the hearing any person interested in the estate may appear and file his allegations in writing, showing that the executor or administrator should be removed, to which the executor or administrator may demur or answer, as hereinbefore provided. The issues raised must be heard and determined by the court.

Notice by publication.

SEC. 116. If the executor or administrator has absconded or conceals himself, or has removed or absented himself from the territory, notice may be given him of the pendency of the proceedings, by publication, in such manner as the court may direct, and the court may proceed upon such notice as if the citation had been personally served.

Compulsory attendance.

SEC. 117. In the proceedings authorized by the preceding sections of this chapter for the removal of an executor or administrator, the court may compel his attendance by attachment, and may compel him to answer questions, on oath, touching his administration, and upon his refusal so to do, may commit him until he obey, or may revoke his letters, or both.

CHAPTER IV.

INVENTORY.—APPRAISEMENT.—EMBEZZLEMENT AND SURRENDER OF THE PROPERTY OF THE ESTATE

Sec. 118. Inventory and appraisement to be made.
Sec. 119. Appointment, compensation, and account of appraisers.
Sec. 120. Oath and duties, contents of inventory.
Sec. 121. Inventory must contain account of moneys.
Sec. 122. Debt of executor or administrator to be accounted for.

Sec. 123. Bequest of debt does not discharge it, how treated.
Sec. 124. Inventory; how signed and verified.
Sec. 125. For neglect to return inventory, letters may be revoked; liability of bond.
Sec. 126. Additional inventory of after discovered property.
Sec. 127. Duties as to care and possession of estate.
Sec. 128. When possession of real estate to be delivered to heirs.
Sec. 129. Action to recover embezzled property.
Sec. 130. Embezzler to be cited to appear and be examined.
Sec. 131. May be arrested and imprisoned if he refuse to appear or answer.
Sec. 132. Trustee may be cited to appear and answer and account.

Inventory and appraisement.

SEC. 118. Every executor or administrator must make and return to the court, at its first term after his appointment, a true inventory and appraisement of all the estate of the decedent, including the homestead, if any, which has come to his possession or knowledge.

Appraisement

SEC. 119. To make the appraisement the probate judge or court must appoint three disinterested persons (any two of whom may act,) who are entitled to receive a reasonable compensation for their services, not to exceed five dollars per day, to be allowed by by the court or judge. The appraisers must, with the inventory, file a verified account of their services and disbursements. If only one day's services are charged, the bill need not be sworn to.

If any part of the estate is in any other county than that in which letters are issued, appraisers thereof may be appointed, either by the probate judge having jurisdiction of the estate or by the probate judge of such other county, on request of the judge having jurisdiction.

Proceedings of appraisers.

SEC. 120. Before proceeding to the execution of their duty the appraisers, before any officer authorized to administer oaths, must take and subscribe an oath, to be attached to the inventory, that they will truly, honestly, and impartially appraise the property which is exhibited to them, according to the best of their knowledge and ability. They must then proceed to estimate and appraise the property. Each article must be set down separately, with the value thereof in dollars and cents, in figures, opposite the articles respectively. The inventory must contain all the estate of the decedent, real and personal, a statement of all debts, partnerships, and other interests, bonds, mortgages, notes, and other securities for the payment of money belonging to the decedent, specifying the name of the debtor in each security, the date, the sum originally payable, the endorsements thereon (if any), with their dates, and the sum which, in the judgment of the appraisers, may be collected on each debt, interest, or security. The inventory must show, so far as the same can be ascertained by the executor or the administrator, what portion of the property is community property, and what portion is the separate property of the decedent.

Contents of inventory.

SEC. 121. The inventory must also contain an account of all moneys belonging to the decedent which have come to the hands of the executor or administrator; and if none, the fact must be so stated in the inventory. If the whole estate consists of money, there need not be an appraisement, but an inventory must be made and returned as in other cases.

Claim against executor.

SEC. 122. The naming of a person as executor does not thereby discharge him from any just claim which the testator has against him, but the claim must be included in the inventory, and the executor is liable for the same as for so much money in his hands when the debt or demand becomes due.

Effect of discharge or bequest of debt against executor

SEC. 123. The discharge or bequest in a will of any debt or demand of the testator against the executor named, or any other person, is not valid against the creditors of the decedent, but is a specific bequest of the debt or demand. It must be included in the inventory, and, if necessary, applied in the payment of his debts; if not necessary for that purpose, it must be paid in the same manner and proportion as other specific legacies.

Inventory to be sworn to.

SEC. 124. The inventory must be signed by the appraisers, and the executor or administrator must take and subscribe an oath, before an officer authorized to administer oaths, that the inventory contains a true statement of all the estate of the decedent which has come to his knowledge and possession, and particularly of all money belonging to the decedent, and of all just claims of the decedent against the affiant. The oath must be endorsed upon or annexed to the inventory.

Penalty for failure to return inventory.

SEC. 125. If an executor or administrator neglects or refuses to return the inventory within the time prescribed, or within such further time, not exceeding two months, which the court or judge shall, for reasonable cause, allow, the court may, upon notice, revoke the letters testamentary or of administration, and the executor or administrator is liable on his bond for any injury to the estate, or any person interested therein, arising from such failure.

Inventory of after discovered property.

SEC. 126. Whenever property not mentioned in an inventory, that is made and filed comes to the possession or knowledge of an executor or administrator, he must cause the same to be appraised in the manner prescribed in this article, and an inventory thereof to be returned within two months after the discovery; and the making of such inventory may be enforced, after notice, by attachment or removal from office.

Possession of decedents's estate.

SEC. 127. The executor or administrator is entitled to the possession of all the real and personal estate of the decedent, and to receive the rents and profits of the real estate, until the estate is settled, or until delivered over by order of the probate court to the heirs or devisees; and must keep in good tenantable repair all houses, buildings, and fixtures thereon, which are under his control.

The heirs or devisees may themselves, or jointly with the executor or administrator, maintain an action for the possession of the real estate, or for the purpose of quieting the title, to the same, against any one except the executor or administrator.

Possession of real estate to be delivered to heirs or devises at end of ten months; exception.

SEC. 128. Unless it satisfactorily appears to the probate court that the rents, issues and profits of the real estate for a longer period are necessary to be received by the executor or administrator, wherewith to pay the debts of the decedent, or that it will probably be necessary to sell the real estate for the payment of such debts, at the end of ten months from the first publication of the notice to creditors, the court must direct the executor or administrator to deliver possession of all the real estate to the heirs-at-law or devisees.

Embezzlement prior to grant of letters.

SEC. 129. If any person, before the granting of letters testamentary or of administration, embezzles or alienates any of the moneys, goods, chattels, or effects of a decedent, he is chargeable therewith, and liable to an action by the executor or administrator of the estate for double the value of the property so embezzled or alienated, to be recovered for the benefit of the estate.

Citation to persons suspected

SEC. 130. If any executor, administrator, or other person interested in the estate of a decedent, complains to the probate judge, on oath, that any person is suspected to have concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods, or chattels of the decedent, or has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings, which contain evidences of, or tend to disclose, the right, title, interest, or claim of the decedent to any real or personal estate, or any claim or demand, or any last will, the judge may cite such person to appear before the probate court, and may examine him on oath upon the matter of such complaint. If such person is not in the county where letters have been granted, he may be cited and examined, either before the probate court of the county where he is found, or before the court issuing the citation. But if, in the latter case, he appears, and is found innocent, his necessary expenses must be allowed him out of the estate.

Penalty for refusal to obey citation.

SEC. 131. If the person so cited refuse to appear and submit to an examination, or to answer such interrogatories as may be put to him, touching the matter of the complaint, the court may, by warrant for that purpose, commit him to the county jail, there to remain in close custody until he submits to the order of the court, or is discharged according to law. If, upon such examination, it appears that he has concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods, or chattels of the decedent, or that he has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings, tending to disclose the right, title, interest or claim of the decedent to any real or personal estate, claim, or demand, or any last will of the decedent, the probate court may make an order requiring such person to disclose his knowledge thereof to the executor or administrator, and may commit him to the county jail, there to remain until the order is complied with, or he is discharged according to law. And all such interrogatories and answers must be in writing, signed by the party examined, and filed in the probate court.

The examination

Damages.

The order for such disclosure made upon such examination is *prima facie* evidence of the right of such administrator to such property, in any action brought for the recovery thereof; and any judgment recovered therein must be for double the value of the property as assessed by the court or jury, or for return of the property, and damages in addition thereto equal to the value of such property.

In addition to the examination of the party, witnesses may be produced and examined on either side.

Persons entrusted with estate may be cited to account

SEC. 132. The probate judge, upon the complaint, on oath, of an executor or administrator, may cite any person who has been entrusted with any part of the estate of the decedent, to appear before such court, and require him to render a full account, on oath, of any moneys, goods, chattels, bonds, accounts, or other property or papers belonging to the estate, which have come to his possession in trust for the executor or administrator, and of his proceedings thereon; and if the person so cited refuses to appear and render such account, the court may proceed against him as provided in the preceding section.

CHAPTER V.

SUPPORT OF FAMILY.—THE HOMESTEAD.—OF THE PROVISIONS FOR THE SUPPORT OF THE FAMILY.

Sec. 133. Widow and children to remain in possession of homestead, &c.
Sec. 134. Property set apart for surviving husband or wife, &c.
Sec. 135. Additional allowance to the family.
Sec. 136. Allowance to family preferred to other charges.
Sec. 137. Property set apart apportioned among members of family.
Sec. 138. Estate not exceeding in value fifteen hundred dollars goes to widow and children; proceedings when it does not exceed three thousand dollars.
Sec. 139. Disposition of property set apart, when widow has other means.
Sec. 140. In whom vested on death of husband or wife; not subject to debts.
Sec. 141. Liens on homestead; how satisfied.
Sec. 142. Proceedings when homestead exceeds two thousand five hundred dollars.
Sec. 143. Majority and minority reports of appraisers.
Sec. 144. Hearing of report and notice thereof; new appraisers.
Sec. 145. Costs; purchasers succeed to rights of predecessors.
Sec. 146. Certified copies of final orders to be recorded.

Family may retain possession of homestead.

SEC. 133. When a person dies, leaving a widow or minor children, the widow or children, until letters are granted and the inventory is returned, are entitled to remain in possession of the homestead, of all the wearing apparel of the family, and of all the household furniture of the decedent; and are also entitled to a reasonable provision for their support, to be allowed by the probate judge.

Property to be set apart for family.

SEC. 134. Upon the return of the inventory, or at any subsequent time during the administration, the court or probate judge may, on his own motion or on petition therefor, set apart for the use of the surviving husband or wife or the minor children of the decedent, all property exempt from execution, including the homestead, selected, designated, and recorded. If none has been selected, designated, and recorded, the judge of the court must select, designate, set apart, and cause to be recorded a homestead, for the use of the persons hereinbefore named, in the manner provided in this chapter, out of the real estate belonging to the decedent.

Extra allowance may be made.

SEC. 135. If the amount set apart be insufficient for the support of the widow and children, or either, the probate court or judge must make such reasonable allowance out of the estate as shall be necessary for the maintenance of the family, according to their circumstances, during the progress of the settlement of the estate, which, in case of an insolvent estate, must not be longer than one year after granting letters testamentary or of administration.

Payment of allowance.

SEC. 136. Any allowance made by the court or judge in accordance with the provisions of this chapter, must be paid in preference to all other charges, except funeral charges and expenses of administration; and any such allowance, whenever made, may, in the discretion of the court or judge, take effect from the death of the decedent.

Ownership of property set apart.

SEC. 137. When property is set apart for the use of the family, in accordance with the provisions of this chapter, if the decedent left a widow or surviving husband and no minor child, such property is the property of the widow or surviving husband. If the decedent left also a minor child or children, the one-half of such property shall belong to the widow or surviving husband, and the remainder to the child, or in equal shares to the children, if there be more than one. If there be no widow or surviving husband, the whole belongs to the minor child or children.

Summary disposition of small estates.

SEC. 138. If on the return of the inventory of the estate of an intestate, it appears that the value of the whole estate does not exceed the sum of fifteen hundred dollars, the probate court, by a decree for that purpose, must assign for the use and support of the widow and minor child or children, if there be a widow or minor child, and if no widow, then for the children, if there are any, the whole of the estate, after the payment of the expenses of his last illness, funeral charges, and expenses of the administration, and there must be no further proceedings in the administration, unless further estate be discovered; and when it so appears that the value of the whole estate does not exceed the sum of three thousand dollars, it is in the discretion of the probate court to dispense with the regular proceedings, or any part thereof, prescribed in this title, and there must be had a summary administration of the estate, and an order of distribution thereof at the end of six months after the issuing of letters. The notice to creditors must be given to present their claims within four months after the first publication of such notice, and those not so presented are barred as in other cases.

When all property goes to children except half of homestead.

SEC. 139. If the widow has a maintenance derived from her own property, equal to the portion set apart to her by the preceding sections of this article, the whole property so set apart, other than her half of the homestead, must go to the minor children.

Survivor's right to homestead

SEC. 140. If the homestead selected by the husband and wife, or either of them, during their coverture, and recorded while both were living, was selected from the community property, it vests, on the death of the husband or wife, absolutely in the survivor. If the homestead was selected from the separate property of either husband or wife, it vests, on the death of the person from whose property it was selected, in his or her heirs, subject to the power of the probate court to assign it for a limited period to the family of the decedent. In either case it is not subject to the payment of any debt or liability contracted by or existing against the husband and wife, or either of them, previous to or at the time of the death of such husband or wife, except as provided in the civil code.

Setting apart the homestead; liens against same.

SEC. 141. If the homestead, selected and recorded prior to the death of the decedent, be returned in the inventory appraised at not exceeding two thousand five hundred dollars in value, or was previously appraised as provided in the civil code, and such appraised value did not exceed that sum, the probate court must, by order, set it off to the persons in whom title is vested by the preceding section. If there be subsisting liens or incumbrances on the homestead, the claims secured thereby must be presented and allowed as other claims against the estate. If the funds of the estate be adequate to pay all claims allowed against the estate, the claims so secured must be paid out of such funds; if the funds of the estate be not sufficient for that purpose, the claims so secured shall be paid proportionally with other claims allowed, and the liens or incumbrances on the homestead shall only be enforced against the homestead for any deficiency remaining after such payment.

Homestead to be carved out.

SEC. 142. If the homestead, as selected and recorded, be returned in the inventory appraised at more than two thousand five hundred dollars, the appraisers must, before they make their return, ascertain and appraise the value of the homestead at the time the same was selected, and if such value exceed two thousand five hundred dollars, or if the homestead was appraised as provided in the civil code, and such appraised value exceeded that sum, the appraisers must determine whether the premises can be divided without any material injury, and if they find that they can be thus divided, they must admeasure and set apart to the parties entitled thereto such portion of the premises, including the dwelling house, as will amount in value to the sum of two thousand five hundred dollars, and make report thereof, giving the metes, bounds, and full description of the portion set apart as a homestead. If the appraisers find that the premises exceeded in value, at the time of their selection, the sum of two thousand five hundred dollars, and that they cannot be divided without material injury, they must report such finding, and thereafter the court may make an order for the sale of the premises and the distribution of the proceeds to the parties entitled thereto.

Report of appraisers.

SEC. 143. Any two of the appraisers concurring may discharge the duties imposed upon the three and make the report. A dissenting report may be made by the third appraiser. The report must state fully the acts of the appraisers. Both reports may be heard and considered by the court in determining a confirmation or rejection of the majority report, but the minority report must in no case be confirmed.

Hearing the report.

SEC. 144. When the report of the appraisers is filed the court must set a day for hearing any objections thereto from any one interested in the estate. Notice of the hearing must be given for such time and in such manner as the court may direct. If the court be satisfied that the report is correct, it must be confirmed, otherwise rejected. In case the report is rejected, the court may appoint new appraisers to examine and report upon the homestead, and similar proceedings may be had for the confirmation or rejection of their report as upon the first report.

Costs, successors to homestead.

SEC. 145. The costs of all proceedings in the probate court provided for in this chapter, must be paid by the estate, as expenses of administration. Persons succeeding, by purchase or otherwise, to the interest, rights, and title of successors to homesteads, or to the right to have homesteads set apart to them, as in this chapter provided, have all the rights and benefits conferred by law on the persons whose interests and rights they acquire.

Copies of orders to be recorded.

SEC. 146. A certified copy of every final order made in pursuance of this chapter, by which a report is confirmed, property assigned or sale confirmed must be recorded in the office of the recorder of the county where the homestead property is situated.

CHAPTER VI.

OF CLAIMS AGAINST THE ESTATE.

Sec. 147. Notice to creditors must be published.
Sec. 148. Time expressed in the notice.
Sec. 149. Affidavit and decree of due publication and posting.
Sec. 150. In what time claims must be presented or be barred.
Sec. 151. Affidavit and proof of claim.
Sec. 152. Proceedings when the judge presents a claim.
Sec. 153. When claim is presented how allowed and endorsed.
Sec. 154. Claim allowed and proved must be filed, and must be accompanied by copy of instrument on which it is founded.
Sec. 155. Limitation of action on rejected claim.
Sec. 156. No claim allowed when barred; judge may examine claimant on oath.
Sec. 157. No action can be maintained until after presentation.
Sec. 158. Time not included in time limited.
Sec. 159. Claim in pending action must be presented.
Sec. 160. Judge may allow part of claim.
Sec. 161. Effect of judgment against administrator.

Sec. 162. Of judgment, execution, and redemption.
Sec. 163. Judgment no lien on real estate.
Sec. 164. By agreement claim may be referred to a disinterested party.
Sec. 165. Proceedings and report of such referee. new referee.
Sec. 166. Liability of executor or administrator for costs.
Sec. 167. Proceedings on claim of executor or administrator.
Sec. 168. If executor or administrator neglects to give notice to creditors.
Sec. 169. List of claims against the estate.
Sec. 170. Interest on interest-bearing claims may be paid.

Notice to creditors.

SEC. 147. Every executor or administrator must, immediately after his appointment, cause to be published in some newspaper of the county, if there be one, (if not, then in such newspaper as may be designated by the court), a notice to the creditors of the deceased, requiring all persons having claims against him to exhibit them, with the necessary vouchers, to the executor or administrator, at the place of his residence or business, to be specified in the notice. Such notice must be pubsliehd as often as the judge or court shall direct, but not less than once a week for four successive weeks; the court or judge may also direct additional notice by publication or posting. In case such executor or administrator resign or is removed before the time expressed in the notice, his successor must give notice for only the unexpired time allowed for such presentation.

Time expressed in notice.

SEC. 148. The time expressed in the notice must be ten months after its first publication when the estate exceeds in value the sum of ten thousand dollars, and four months when it does not.

Proof of notice and order thereon.

SEC. 149. After notice is given as required by the preceding section, a copy thereof, with the affidavit of due publication, or of publication and posting, must be filed; and upon such affidavit or other testimony to the satisfaction of the court, an order or decree showing that due notice to the creditors has been given, and directing that such order or decree be entered in the minutes and recorded, must be made by the court.

Time within which claims must be presented.

SEC. 150. If a claim arising upon a contract heretofore made be not presented within the time limited in the notice, it is barred forever, except as follows: If it be not then due, or if it be contingent, it may be presented within one month after it becomes due or absolute; if it be made to appear by the affidavit of the claimant, to the satisfaction of the executor or administrator and the probate judge, that the claimant had no notice, as provided in this chapter, by reason of being out of the territory, it may be presented at any time before a decree of distribution is entered. A claim for a deficiency remaining unpaid after a sale of property of the estate mortgaged or pledged must be presented within one month after such deficiency is ascertained. All claims arising upon contracts hereafter made, whether the same be due, not due, or contingent; must be presented within the time limited in the notice; and any claim not so presented is barred forever: *Provided, however*, That when it is made to appear by the affidavit of the claimant, to the satisfaction of the executor or administrator and the probate judge, that the claimant had no notice, as provided in this chapter, by reason of being out of the territory, it may be presented at any time before a decree of distribution is entered.

Proof of claims

SEC. 151. Every claim which is due when presented to the administrator must be supported by the affidavit of the claimant, or some one in his behalf, that the amount is justly due, that no payments have been made thereon which are not credited, and that there are no set-offs to the same to the knowledge of the claimant or affiant. If the claim be not due when presented, or be contingent, the particulars of such claim must be stated. When the affidavit is made by a person other than the claimant, he must set forth in the affidavit the reasons why it is not made by the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator may also require satisfactory vouchers or proofs to be produced in support of the claim. If the estate be insolvent, no greater rate of interest shall be allowed upon any claim after the first publication of notice to creditors than is allowed on judgments obtained in the district court.

Probate judge may present claim: action thereon.

SEC. 152. Any probate judge may present a claim against the estate of a decedent for an allowance, to the executor or administrator thereof; and if the executor or administrator allows the claim, he must, in writing, designate some probate judge of an adjoining county, who, upon the presentation of such claim to him, is vested with the same power to allow or reject it as he would have if the will had been proved or administration granted in his own county; and the probate judge presenting such claim, in case of its rejection by the executor or administrator, or by such probate judge as shall have acted upon it, has the same right to sue in a proper court for its recovery as other persons have when their claims against an estate are rejected.

Allowance and rejection of claims.

SEC. 153. When a claim, accompanied by the affidavit required in this chapter, is presented to the executor or administrator, he must endorse thereon his allowance or rejection, with the day and date thereof. If he allows the claim, it must be presented to the probate judge for his approval, who must, in the same manner, endorse upon it his allowance or rejection. If the executor or administrator or the judge refuse or neglect to endorse such allowance or rejection for ten days after the claim has been presented to him, such refusal or neglect is equivalent to a rejection on the tenth day; and if the presentation be made by a notary, the certificate of such notary, under seal, is *prima facie* evidence of such presentation and rejection. If the claim be presented to the executor or administrator before the expiration of the time limited for the presentation of claims, the same is presented in time, though acted upon by the executor or administrator and by the judge after the expiration of such time. If the claim be payable in a particular kind of money or currency, it shall, if allowed, be payable only in such money or currency.

Claims allowed to be filed.

SEC. 154. Every claim allowed by the executor or administrator and approved by the probate judge, or a copy thereof, as hereinafter provided, must, within thirty days thereafter, be filed in the probate court, and be ranked among the acknowledged debts of the estate, to be paid in due course of administration. If the claim is founded on a bond, bill, note, or any other instrument, a copy of such instrument must accompany the claim, and the original instrument must be exhibited if demanded, unless it is lost or destroyed, in which case the claimant must accompany his claim by his affidavit, containing a copy or particular description of such instrument, and stating its loss or destruction. If the claim or any part thereof is secured by a mortgage or other lien, which has been recorded in the office of the recorder of the county in which the land affected by it lies, in which case it is sufficient to describe the mortgage or lien and refer to the date, volume, and page of its record.

Claims founded on written instrument.

If in any case the claimant has left any original voucher in the hands of the executor or administrator, or suffered the same to be filed in court, he may withdraw the same when a copy thereof has been already or is then attached to his claim. A brief description of the claim filed must be entered by the clerk in the register, showing the name of the claimant, the amount and character of the claim, rate of interest, and date of allowance.

Suit on rejected claims.

SEC. 155. When a claim is rejected, either by the executor or the administrator or the probate judge, the holder must bring suit in the proper court against the executor or administrator, within three months after the date of its rejection, if it be then due, or within two months after it becomes due, otherwise the claim is forever barred.

Claim barred by limitations not allowed.

SEC. 156. No claim must be allowed by the executor or administrator, or by the probate judge, which is barred by the statute of limitations. When a claim is presented to the probate judge for his allowance, he may in his discretion, examine the claimant and others, on oath, and hear any other legal evidence touching the validity of the claim.

Claims must be presented before suit.

SEC. 157. No holder of any claim against an estate shall maintain any action thereon, unless the claim is first presented to the executor or administrator.

Time of vacancy not counted.

SEC. 158. The time during which there shall be a vacancy in the administration must not be included in any limitations herein prescribed.

Claims pending at time of death.

SEC. 159. If an action is pending against the decedent at the time of his death, the plaintiff must in like manner present his claim to the executor or administrator, for allowance or rejection, authenticated as required in other cases; and no recovery shall be had in the action unless proof be made of the presentation required.

Allowance of claim in part

SEC. 160. Whenever any claim is presented to an executor or administrator, or to the probate judge, and he is willing to allow the same in part, he must state in his endorsement the amount he is willing to allow. If the creditor refuse to accept the amount allowed in satisfaction of his claim, he shall recover no costs in any action therefor brought against the executor or administrator, unless he recovers a greater amount than that offered to be allowed.

Judgment against executor.

SEC. 161. A judgment rendered against an executor or administrator upon any claim for money against the estate of his testator or intestate, only establishes the claim in the same manner as if it had been allowed by the executor or administrator and the probate judge, and the judgment must be that the executor or administrator pay in due course of administration the amount ascertained to be due. A certified transcript of the judgment must be filed in the probate court. No execution must issue upon such judgment, nor shall it create any lien upon the property of the estate or give to the judgment creditor any priority of payment.

No execution to issue after death.

SEC. 162. When judgment has been rendered for against the testator [or] intestate in his lifetime, no execution shall issue thereon after his death, except as provided in section 317 of the code of civil procedure. A judgment against the decedent for the recovery of money must be presented to the executor or administrator, like any other claim. If execution is actually levied upon any property of the decedent before his death, the same may be sold for the satisfaction thereof; and the officer making the sale must account to the executor or administrator for any surplus in his hands. A judgment creditor having a judgment which was rendered against the testator or intestate in his lifetime, may redeem any real estate of the decedent from any sale under foreclosure or execution, in like manner and with like effect as if the judgment debtor were still living.

If execution levied property may be sold

When judgment is not lien on real property of estate.

SEC. 163. A judgment rendered against a decedent, dying after a verdict or decision on an issue of fact, but before judgment is rendered thereon, is not a lien on the real property of the decedent, but is payable in due course of administration.

Reference of doubtful claims.

SEC. 164. If the executor or administrator doubts the correctness of any claim presented to him, he may enter into an agreement, in writing, with the claimant, to refer the matter in controversy to some disinterested person, to be approved by the probate judge: upon filing the agreement and approval of the probate judge in the office of the clerk of the district court for the county in which the letters testamentary or of administration were granted, the clerk must, either in vacation or in term, enter a minute of the order, referring the matter in controversy to the person so selected; or, if the parties consent, a reference may be had to the probate court, and the report of the referee, if confirmed, establishes or rejects the claim, the same as if it had been allowed or rejected by the executor or administrator and the probate judge.

Trial by referee; power of court.

SEC 165. The referee must hear and determine the matter and make his report thereon to the court in which his appointment is entered. The same proceedings shall be had in all respects, and the referee shall have the same powers, be entitled to the same compensation, and subject to the same control, as in other cases of reference. The court may remove the referee, appoint another in his place, set aside or confirm his report, and adjudge costs, as in actions against executors or administrators, and the judgment of the court thereon shall be as valid and effectual in all respects as if the same had been rendered in a suit commenced by ordinary process.

Liability of executor, etc. for costs

SEC. 166. When a judgment is recovered with costs against an executor or administrator, he shall be individually liable for such costs; but they must be allowed him in his administration account, unless it appears that the suit or proceeding in which the costs were taxed was prosecuted or defended without just cause.

Claim of executor, etc. against estate.

SEC. 167. If the executor or administrator is a creditor of the decedent, his claim, duly authenticated by affidavits, must be presented for allowance or rejection to the probate judge, and its allowance by the judge is sufficient evidence of its correctness, and it must be paid as other claims, in due course of administration. If however, the probate judge rejects the claim, action thereon may be had against the estate by the claimant, and summons must be served upon the probate judge, who may appoint an attorney at the expense of the estate to defend the action. If the claimant recovers no judgment, he must pay all costs, including defendant's fees.

Failure to give notice to creditors is cause for removal.

SEC. 168. If any executor or administrator neglects for two months after his appointment to give notice to creditors, as prescribed by this chapter, the court must revoke his letters, and appoint some other person in his stead, equally or the next in order entitled to the appointment.

Statement of claims to be returned

SEC. 169. At the same term at which he is required to return his inventory, the executor or administrator must also return a statement of all claims against the estate which have been presented to him, if so required by the court; and from term to term thereafter he must present a statement of claims subsequently presented to him. In all such statements he must designate the names of the creditors, the nature of each claim, when it became due or will become due, and whether it was allowed or rejected by him.

Payment of interest bearing claims.

SEC. 170. If there be any debt of the decedent bearing interest, whether presented or not, the executor or administrator may, by order of the court, pay the amount then accumulated and unpaid, or any part thereof, at any time when there are sufficient funds properly applicable thereto, whether said claim be then due or not; and interest shall thereupon cease to accrue upon the amount so paid. This section does not apply to existing debts, unless the creditor consent to accept the amount.

CHAPTER VII.

SALES OF REAL AND PERSONAL PROPERTY, AND CONFIRMATION THEREOF.

Sec. 171. Property of deceased liable for debts.
Sec. 172. Proceedings when money is borrowed for estate.
Sec. 173. Sales of property; order of court.
Sec. 174. Petition for order of sale.
Sec. 175. When estate insolvent or just sufficient to pay all claims, only one sale made
Sec. 176. Sale of perishable and other property to pay family allowance.
Sec. 177. Sale of part or whole of personal property.
Sec. 178. Interests in partnership and pledged property and choses in action may be sold.
Sec. 179. When property must be sold and the order in which sold.
Sec. 180. Public sale; real property sold in certain cases.
Sec. 181. Mines and mining interests may be sold.
Sec. 182. Petition for order of sale.
Sec. 183. Order to show cause and service thereof.
Sec. 184. Hearing of petition and order of sale.
Sec. 185. Proceedings when order of sale made.
Sec. 186. When personal estate insufficient, real estate may be sold.
Sec. 187. Petition for sale of real estate.
Sec. 188. Order to show cause.
Sec. 189. Copy to be served; when notice dispensed with.
Sec. 190. Hearing, and what may be passed on thereat.
Sec. 191. Attendance and examination of witnesses.
Sec. 192. When court may order the sale of the whole of the real estate.
Sec. 193. If court be satisfied order of sale to be made.

Sec. 194. Order of sale.
Sec. 195. Other persons may petition for order of sale.
Sec. 196. Notice of sale at public auction.
Sec. 197. Place and hours of sale.
Sec. 198. Proceedings when sold at private sale.
Sec. 199. Confirmation of sale and new appraisement.
Sec. 200. Credit sales on security.
Sec. 201. Report of sale and hearing thereon; order of re-sale; confirmation.
Sec. 202. Hearing and objections on return of sale.
Sec. 203. Order confirming sale; when purchaser refuses to pay; order of re-sale.
Sec. 204. Conveyances after sale; what passes.
Sec. 205. What must appear before confirmation.
Sec. 206. Postponement of sale.
Sec. 207. Notice of postponement.
Sec. 208. Will to be followed in paying debts, etc.
Sec. 209. Sales made without order if the will so direct, but such sales must be reported.
Sec. 210. Proceedings when provision made by will is insufficient.
Sec. 211. Liability of property given to legatees and devisees for debts of estate.
Sec. 212. Contribution by devisees or legatees.
Sec. 213. Interest in contract for purchase of land may be sold.
Sec. 214. How sale under last section made.
Sec. 215. Purchaser's bond under preceding section.
Sec. 216. Assignment of contract and effect thereof.
Sec. 217. Mortgaged property—disposal of purchase money.
Sec. 218. Mortgagee may become the purchaser.
Sec. 219. Action for damages on bond of administrator.
Sec. 220. Fraudulent sales by administrator.
Sec. 221. Limitation of action to recover estate of decedent sold under the provisions of this chapter.
Sec. 222. Limitation when persons under legal disability to sue.
Sec. 223. Return of account of sales.
Sec. 224. Administrator shall not purchase.

Property chargeable with payment of claims

SEC. 171. All the property of the decedent shall be chargeable with the payment of the debts of the deceased, the expenses of administration, and the allowance to the family, except as otherwise provided in this code and in the civil code. And the said property, personal and real, may be sold as the court may direct, in the manner prescribed in this chapter. There shall be no priority as between personal and real property for the above purposes.

Money may be borrowed.

SEC. 172. In all cases the executor or administrator of an estate, instead of selling the property of the estate to pay the charges and demands against the same, may borrow money at the lowest rate of interest at which it may be had, and for such length of time the court may allow, to pay such claims, when it shall be made to appear to the court, by petition and evidence, that an immediate sale of the property of the estate will be detrimental to the heirs, devisees, legatees, or other persons having an interest therein; and in such case the estate shall be chargeable with the payment of such sum so borrowed and interest thereon. Such petition may be made by the executor or administrator, or by any one of the heirs of the deceased, or other person interested in the estate. Notice shall be given as follows: If by the executor or administrator, to all the heirs, devisees, legatees residing in the territory; and if by any heir, devisee, or legatee, to the administrator or executor, and to all other heirs, devisees, and legatees residing in the territory, which notice shall be given as notice to creditors by an executor or administrator is required by the provisions of this act.

No sale except by order of court.

SEC. 173. No sale of any property of an estate of a decedent is valid unless made under order of the probate court, except as otherwise provided in this chapter. All sales must be reported under oath, and confirmed by the probate court, before the title to the property sold passes.

Petition for order of sale

SEC. 174. All petitions for orders of sale must be in writing, setting forth the fact showing the sale to be necessary, and, upon the hearing, any person interested in the estate may file his written objections, which must be heard and determined, a failure to set forth the facts showing the sale to be necessary will not invalidate the subsequent proceedings, if the defect be supplied by the proofs at the hearing, and the general facts showing the necessity be stated in the order directing the sale.

Only one petition or sale necessary.

SEC. 175. When it appears to the court that the estate is insolvent, or that it will require a sale of all the property of the estate of every character, to pay the family allowance, expenses of administration, and debts, there need be but one petition filed, but one order of sale made, and but one sale had, except in the case of perishable property, which may be sold as provided in section 176. The probate court, when a petition for the sale of any property for any of the purposes herein named is presented, must inquire fully into the probable amount required to make all such payments, and if there be no more estate than sufficient to pay the same, may require but one proceeding for the sale of the entire estate. In such case the petition must set forth substantially the facts required by section 187.

Sale of perishable property.

SEC. 176. At any time after receiving letters the executor, administrator, or special administrator may apply to the court or judge, and obtain an order to sell perishable and other personal property likely to depreciate in value, or which will incur loss or expense by being kept, and so much other personal property as may be necessary to pay the allowance made to the family of the decedent. The order for the sale may be made without notice, but the executor, administrator, or special administrator is responsible for the property, unless, after making a sworn return and on a proper showing, the court shall approve the sale.

Sale of personal property.

SEC. 177. If claims against the estate have been allowed and a sale of property is necessary for their payment, or the expenses of administration, or for the payment of legacies, the executor or administrator may apply for an order to sell so much of the personal property as may be necessary therefor. Upon filing his petition, notice of at least five days must be given of the hearing of the application, either by posting notices or by advertising. He may also make a similar application, either in vacation or term, from time to time, so long as any personal property remains in his hands and the sale thereof is necessary. If it appear for the best interest of the estate, he may, at any time after filing the inventory, in like manner, and after giving like notice, apply for and obtain an order to sell the whole of the personal property belonging to the estate, whether necessary to pay debts or not.

Sale of partnership interest and choses in action

SEC. 178. Partnership interest or interests belonging to any estate by virtue of any partnership formerly existing, interests in personal property pledged, and choses in action, may be sold in the same manner as other personal property, when it appears to be for the best interest of the estate. Before confirming the sale of any partnership interest, whether made to the surviving partner or to any other person, the court or judge must carefully inquire into the condition of the partnership affairs, and must examine the surviving partner, if in the county and able to be present in court.

Order of sale.

SEC. 179. If it appears that a sale is necessary for the payment of debts, or the family allowance, or for the best interest of the estate and the persons interested in the property to be sold, whether it is or is not necessary to pay the debts or family allowance, the court or judge must order it to be made. In making orders and sales for the payment of debts or family allowance, such articles as are not necessary for the support and subsistence of the family of the decedent, or are not especially bequeathed, must be first sold, and the court or judge must so direct.

Property when and where sold

SEC. 180. The sale of personal property must be made at public auction, for such money or currency as the court may direct, and after public notice given for at least ten days, by notices posted in three public places in the county, or by publication in a newspaper, or both, containing the time and place of sale, and a brief description of the property to be sold, unless, for good reasons shown, the probate court or judge orders a private sale or a shorter notice. Public sales of such property must be made at the court house door, or at the residence of the decedent, or at some other public place, but no sale shall be made of any personal property which is not present at the time of sale, unless the court otherwise order. When a sale of property of the estate is necessary to pay the allowance of the family, or the debts outstanding against the decedent, or the debts, expenses, or charges of administration, or legacies, the executor or administrator may also sell any real as well as personal property of the estate, for that purpose, upon the order of the probate court: and an application for the sale of real property may also embrace the sale of personal property.

Sale of mines.

SEC. 181. When it appears from the inventory of the estate of any decedent that his estate consists, in whole or in part, of mines or interests in mines, or of shares, interests, or stocks in a mining corporation, such mines, interests, stocks, or shares may be sold under the order of the probate court having jurisdiction of the estate, as hereinafter provided.

SEC. 182. The executor, administrator, or any heir-at-law or creditor of the estate, any partner or member of any mining company in which interests or shares are held or owned by the estate, may file in the probate court a petition, in writing, setting forth the general facts of the estate being then in due course of administration, and particularly describing the mine, interest, or shares, which it is desired to sell, and particularly the condition and situation of the mines or mining interests, or of the mining company or corporation in which such interests or shares are held, and the grounds upon which the sale is asked to be made.

Petition.

SEC. 183. Upon the presentation of such petition the probate judge must make an order directing all persons interested to appear before him at a time and place specified, not less than four nor more than ten weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell such mines, mining interests, shares, or stocks, as are set forth in the petition and belonging to the estate. A copy of the order to show cause must be personally served on all persons interested in the estate at least ten days before the time appointed for hearing the petition, or published at least four successive weeks in such newspaper as the court shall specify. If all persons interested in the estate signify in writing their assent to such sale, the notice may be dispensed with.

Order to show cause

SEC. 184. If, upon hearing the petition, it appears to the satisfaction of the probate judge that it is to the interest of the estate that such mining property or interests of the estate should be sold; or if it appears to his satisfaction that an immediate sale is necessary in order to secure the just rights or interests of the mining partners or tenants in common, in which such shares, stocks, or property are held, such probate judge must make an order authorizing the executor or administrator to sell such mining interests, mines, or shares, as hereinafter provided.

Order of sale

SEC. 185. After the order of sale is made, all further proceedings for the sale of such mining property, and for the notice, report, and confirmation thereof, must be in conformity with the provisions of this chapter.

Proceedings after order of sale

SEC. 186. When the personal estate in the hands of the executor or administrator is exhausted, or insufficient to pay the allowance of the family, the debts

Real estate may be sold

outstanding against the decedent, and the debts, expenses, and charges of administration, the executor or administrator may sell the real estate for that purpose, upon the order of the probate court.

Petition for sale of real estate.

SEC. 187. To obtain an order for the sale of real property, he must present a verified petition to the probate court, or to the judge at chambers, setting forth the amount of personal property that has come to his hands, and how much thereof, if any, remains undisposed of; the debts outstanding against the decedent, as far as can be ascertained or estimated; the amount due upon the family allowance, or that will be due after the same has been in force for one year; the debts, expenses, and charges of administration already accrued, and an estimate of what will or may accrue during the administration; a general description of all the real property of which the decedent died seized, or in which he had any interest, or in which the estate has acquired any interest, and the condition and value thereof, and whether the same be community or separate property; the names of the legatees and devisees, if any, and of the heirs of the decedent, so far as known to the petitioner. If any of the matters here enumerated cannot be ascertained, it must be so stated in the petition; but a failure to set forth the facts showing the sale to be necessary will not invalidate the subsequent proceedings, if the defect be supplied by the proofs at the hearing, and the general facts showing such necessity be stated in the decree.

Order to persons interested to appear.

SEC. 188. If it appears to the court or judge from such petition that it is necessary to sell the whole or some portion of the real estate for the purposes and reasons mentioned in the preceding section, or any of them, such petition must be filed, and an order thereupon made directing all persons interested in the estate to appear before the court, at a time and place specified, not less than four nor more than ten weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell so much of the real estate of the decedent as is necessary.

Services of copy to order.

SEC. 189. A copy of the order to show cause must be personally served on all persons interested in the estate, any general guardian of a minor so interested, and any legatee, or devisee, or heir of the decedent, provided they are residents of the county, at least ten days before the time appointed for hearing the petition, or be published four successive weeks in such newspaper in the county as the court or judge shall direct. If all persons interested in the estate join in the petition for the sale, or signify in writing their assent thereto, the notice may be dispensed with, and the hearing may be had at any time.

Hearing

SEC. 190. The probate court, at the time and place appointed in such order, or at such other time to which the hearing may be postponed, upon satisfactory proof of personal service or publication of a copy of the order, by affidavit or otherwise, if the consent in writing, to such sale, of all parties interested is not filed, must proceed to hear the petition, and hear and examine the allegations and proofs of the petitioners, and of all persons interested in the estate who may oppose the application. All claims against the decedent not before presented, if the period of presentation has not elapsed, may be presented and passed upon at the hearing.

Testimony.

SEC. 191. The executor, administrator, and witnesses may be examined on oath by either party, and process to compel them to attend and testify may be issued by the probate judge, in the same manner and with like effect as in other cases.

Court may order whole or any part of real estate to be sold

SEC. 192. If it appears necessary to sell a part of the real estate, and that by a sale thereof the residue of the estate, real or personal, or some specific part thereof, would be greatly injured, or diminished in value, or subjected to expense, or rendered unprofitable, or that after any such sale the residue would be so small in quantity or value, or would be of such a character with reference to its future disposition among the heirs or devisees, as clearly to render it for the best interest of all concerned that the same should be sold, the court may authorize the sale of the whole estate or any part thereof necessary and for the best interests of all concerned.

Order of sale

SEC. 193. If the court is satisfied, after a full hearing upon the petition and an examination of the proofs and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary for any of the causes mentioned in this chapter, or if such sale be assented to by all the persons interested, an order must be made to sell the whole, or so much and such parts of the real estate described in the petition as the court shall judge necessary or beneficial.

Contents of order of sale.

SEC. 194. The order of sale must describe the lands to be sold and the terms of sale, which may be for cash or on a credit not exceeding one year, payable in gross or installments, and in such kind of money, with interest, as the court may direct. The land may be sold in one parcel or in sub-divisions, as the executor or administrator shall judge most beneficial to the estate, unless the court otherwise specially directs. If it appears that any of such real estate has been devised and not charged in such devise with the payment of debts or legacies, the court must order the remainder to be sold before that so devised. Every such sale must be ordered to be made at public auction, unless in the opinion of the court it would benefit the estate to sell the whole or some part of such real estate at private sale. The court may, if the same is asked for in the petition, order or direct such real estate, or any part thereof, to be sold at either public or private sale, as the executor or administrator shall judge to be most beneficial for the estate.

Sale may be public or private.

If the executor or administrator neglects or refuses to make a sale under the order and as directed therein, he may be compelled to sell, by order of the court, made on motion, after due notice, by any party interested.

Persons interested may apply for order of sale.

SEC. 195. If the executor or administrator neglects to apply for an order of sale when it is necessary, any person may make application therefor, in the same manner as the executor or administrator, and notice thereof must be given to the executor or administrator before the hearing. The petition of such applicant must contain as many of the matters in section 179 as he can ascertain, and the decree of the sale must fix the period of time within which the executor or administrator must make the sale.

Notice of sale.

SEC. 196. When a sale is ordered, and is to be made at public auction, notice of the time and place of sale must be posted up in three of the most public places in the county in which the land is situated, and published in a newspaper, if there be one printed in the same county, but if none, then in such paper as the court may direct, for three weeks successively next before the sale; the lands and tenements to be sold must be described with common certainty in the notice.

Time and place of sale.

SEC. 197. Sales at public auction must be made in the county where the land is situated, but when the land is situated in two or more counties it may be sold in either. The sale must be made between the hours of nine o'clock in the morning and the setting of the sun on the same day, and must be made on the day named in notice of sale, unless the same is postponed.

Notice of private sale

SEC. 198. When a sale of real estate is ordered to be made at private sale, notice of the same must be posted up in three of the most public places in the county in which the land is situated, and published in a newspaper, if there be one printed in the same county, if none, then in such paper as the court may direct, for two weeks successively next before the day on or after which the sale is to be made, in which the lands and tenements to be sold must be described with common certainty. The notice must state a day on or after which the sale will be made, and a place where offers or bids will be received. The day last referred to must be at least fifteen days from the first publication of notice, and the sale must not be made before that day, but must be made within six months thereafter. The bids or offers must be in writing, and may be left at the place designated in the notice, or delivered to the executor or administrator personally, or may be filed in the office of the clerk of the probate court, to which the return of sale must be made, at any time after the first publication of the notice and before the making of the sale.

Bids.

If it is shown that it will be for the best interest of the estate, the court or judge may, by an order, shorten the time of notice, which shall not, however, be less than one week, and may provide that the sale may be made on or after a day less than fifteen but not less than eight days from the first publication of the notice of sale, and the sale may be made to correspond with such order.

Ninety per cent. of appraised value must be realized

SEC. 199. No sale of real estate at private sale shall be confirmed by the court unless the sum offered is at least ninety per cent. of the appraised value thereof, nor unless such real estate has been appraised within one year of the time of such sale. If it has not been so appraised, or if the court is satisfied that the appraisement is too high or too low, appraisers must be appointed, and they must make an appraisement thereof in the same manner as in the case of an original appraisement of an estate. This may be done at any time before the sale or confirmation thereof.

Payment of purchase money: how secured.

SEC. 200. The executor or administrator must, when a sale is made upon a credit, take the notes of the purchaser for the purchase money, with a mortgage on the property to secure their payment.

Return of sale and hearing

SEC. 201. The executor or administrator, after making any sale of real estate, must make a return of his proceedings to the probate court, which must be filed in the office of the clerk at any time subsequent to the sale, either in term or vacation. If the sale is made at public auction and the return made and filed on or before the first day of the next term thereafter, no notice is required of such return, or of the hearing thereof, but the hearing may be had upon the first day of the term, or any subsequent day to which the same may be postponed. If the sale be not made at public auction, or, if made at public auction, a hearing upon the return of proceedings be asked for in the return, or is brought on for a hearing upon a day before the first day of the next term after such sale, the court or judge must fix the day for the hearing, of which notice of at least ten days must be given by the clerk, by notices posted in three public places in the county, or by publication in a newspaper, or both, as the court or judge shall direct, and must briefly indicate the land sold, the sum for which it was sold, and must refer to the return for further particulars. Upon the hearing the court must examine the return and witnesses in relation to the same, and if the proceedings were unfair, or the sum bid disproportionate to the value, and that a sum exceeding such bid, at least ten per cent. exclusive of the expenses of a new sale, may be obtained, the court may vacate the sale and direct another to be had, of which notice must be given, and the sales in all respects conducted as if no previous sale had taken place. If an offer of ten per cent. more in amount than that named in the return be made to the court in writing by a responsible person, it is in the discretion of the court to accept such offer and confirm the sale to such person, or to order a new sale.

Objections to return.

SEC. 202. When return of the sale is made and filed, any person interested in the estate may file written objections to the confirmation thereof, and may be heard thereon when the return is heard by the court or judge, and may produce witnesses in support of his objections.

Confirmation of sale.

SEC. 203. If it appears to the court that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, and that a greater sum as above specified cannot be obtained, or if the increased bid mentioned in section 201 be made and accepted by the court, the court must make an order confirming the sale and directing conveyances to be executed. The sale from that time is confirmed and valid; and a certified copy of the order confirming it and directing conveyances to be executed, must be recorded in the office of the recorder of the county within which the land sold is situated. If, after the confirmation, the purchaser neglects or refuses to comply with the terms of sale, the court may, on motion of the executor or administrator, and after notice to the purchaser, order a re-sale to be made of the property. If the amount realized on such re-sale does not cover the bid and expenses of the previous sale, such purchaser is liable for the deficiency to the estate.

Conveyances

SEC. 204. Conveyances must thereupon be executed to the purchaser by the executor or administrator, and they must refer to the orders of the probate court authorizing and confirming the sale of the property of the estate, and directing the conveyances thereof to be executed, and to the record of the confirmation, in the office of the county recorder, either by the date of such recording or by the date, volume, and page of the record, and such references shall have the same effect as if the order were at large inserted in the conveyance. Conveyances so made convey all the right, title, interest, and estate of the decedent in the premises at the time of his death, if prior to the sale, by operation of law or otherwise, the estate has acquired any right, title, or interest in the premises other than or in addition to that of the decedent at the time of his death, such right, title, or interest also passes by such conveyance.

Order of confirmation

SEC. 205. Before any order is entered confirming the sale it must be proved to the satisfaction of the court that notice was given of the sale as prescribed, and the order of confirmation must show that such proof was made.

Sale may be postponed

SEC. 206. If, at the time appointed for the sale, the executor or administrator deems it for the interest of all persons concerned therein that the same be postponed, he may postpone it from time to time, not exceeding in all three months.

Notice of postponement

SEC. 207. In case of a postponement, notice thereof must be given by public declaration at the time and place first appointed for the sale, and if the postponement be for more than one day, further notice must be given by posting notices in three or more public places in the county where the land is situated, or publishing the same, or both, as the time and circumstances will admit.

Provision of will as to payment of claims to be followed.

SEC. 208. If the testator makes provision by his will, or designates the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they must be paid according to such provision or designation, out of the estate thus appropriated, so far as the same is sufficient.

Sales without order.

SEC. 209. When property is directed by the will to be sold, or authority is given in the will to sell property, the executor may sell any property of the estate without the order of the probate court, and at either public or private sale, and with or without notice, as the executor may determine; but the executor must make return of such sales as in other cases; and if directions are given in the will as to the mode of selling, or the particular property to be sold, such directions must be observed. In either case no title passes unless the sale is confirmed by the court.

Proceeding if provisions of will not sufficient.

SEC. 210. If the provision made by the will, or the estate appropriated therefor, is insufficient to pay the debts, expenses of administration, and family expenses, that portion of the estate not devised or disposed of by the will, if any, must be appropriated and disposed of for that purpose, according to the provisions of this chapter.

All the estate is subject to claims.

SEC. 211. The estate, real and personal, given by will to legatees or devisees, is liable for the debts, expenses of administration, and family expenses, in proportion to the value or amount of the several devises or legacies, but specific devises or legacies are exempt from such liability if it appears to the court necessary to carry into effect the intention of the testator, and there is other sufficient estate.

Contribution

SEC. 212. When an estate, given by will, has been sold for the payment of debts or expenses, all the devisees and legatees must contribute according to their respective interests to the devisee or legatee whose devise or legacy has been taken therefor, and the probate court, when distribution is made, must, by decree for that purpose, settle the amount of the several liabilities and decree the amount each person shall contribute and reserve the same from their distributive shares respectively for the purpose of paying such contribution.

Sale of contract for purchase.

SEC. 213. If a decedent, at the time of his death, was possessed of a contract for the purchase of lands, his interest in such land and under such contracts may be sold, on the application of his executor or administrator, in the same manner as if he had died seized of such lands, and the same proceedings may be had for that purpose as are prescribed in this chapter for the sale of lands of which he died seized, except as hereinafter provided.

Conditions of sale

SEC. 214. The sale must be made subject to all payments that may thereafter become due on such contracts, and if there are any such the sale must not be confirmed by the probate judge until the purchasers execute a bond to the executor or administrator for the benefit and indemnity of himself and of the persons entitled to the interest of the decedent in the lands so contracted for, in double the whole amount of payments thereafter to become due on such contract, with such sureties as the probate judge shall approve.

Bond to be given.

SEC. 215. The bond must be conditioned that the purchaser will make all payments for such land that become due after the date of the sale, and will fully indemnify the executor or administrator and the persons so entitled against all demands, costs, charges, and expenses, by reason of any covenant or agreement contained in such contract.

Contract to be assigned

SEC. 216. Upon the confirmation of the sale the executor or administrator must execute to the purchaser an assignment of the contract, which vests in the purchaser, his heirs and assigns, all the right, title, and interest of the estate, or of the persons entitled to the interest of the decedent, in the lands sold at the time of the sale, and the purchaser has the same rights and remedies against the vendor of such land as the decedent would have had if he were living.

Sale of lands under lien.

SEC. 217. When any sale is made by an executor or administrator, pursuant to the provisions of this chapter, of lands subject to any mortgage or other lien which is a valid claim against the estate of the decedent, and has been presented and allowed, the purchase money must be applied, after paying the necessary expenses of the sale, first, to the payment and satisfaction of the mortgage or lien, and the residue, if any, in due course of administration. The application of the purchase money to the satisfaction of the mortgage or lien must be made without delay, and the land is subject to such mortgage or lien until the purchase money has been actually so applied. No claim against any estate, which has been presented and allowed, is affected by the statute of limitations, pending the proceedings for the settlement of the estate.

Disposition of purchase money.

The purchase money, or so much thereof as may be sufficient to pay such mortgage or lien, with interest and any lawful costs and charges thereon, may be paid into the probate court, to be received by the clerk thereof, whereupon the mortgage or lien upon the land must cease; and the purchase money must be paid over by the clerk of the court without delay, in payment of the expenses of the sale, and in satisfaction of the debt to secure which the mortgage or other lien was taken, and the surplus, if any, at once returned to the executor or administrator, unless, for good cause shown, after notice to the executor or adminstrator, the court otherwise directs.

Purchaser of sale of mortgaged property

SEC. 218. At any sale, under order of the probate court, of lands upon which there is a mortgage or lien, the holder thereof may become the purchaser and his receipt for the amount due him from the proceeds of the sale is a payment *pro tanto*. If the amount for which he purchased the property is insufficient to defray the expenses and discharge his mortgage or lien, he must pay to the court or the clerk thereof an amount sufficient to pay such expenses.

Liability for misconduct in sale

SEC. 219. If there is any neglect or misconduct in the proceedings of the executor in relation to any sale, by which any person interested in the estate suffers damage, the party aggrieved may recover the same in an action upon the bond of the executor or administrator, or otherwise.

Fraudulent sales.

SEC. 220. Any executor or administrator who fraudulently sells any real estate of a decedent, contrary to or otherwise than under the provisions of this chapter, is liable in double the value of the land sold, as liquidated damages, to be covered in action by the person havingan estate of inheritance therein.

Limitation of action.

SEC. 221. No action for the recovery of any estate sold by an executor or administrator under the provisions of this chapter, can be maintained by any heir or other person claiming under the decedent, unless it be commenced within three years next after the sale An action to set aside the sale may be instituted and maintained at any time within three years from the discovery of the fraud, or other grounds upon which the action is based.

Applicability of preceding section

SEC. 222. The preceding section shall not apply to minors or others under any legal disability to sue at the time when the right of action first accrues, but all such persons may commence an action at any time within three years after the removal of the disability.

SEC. 223. When a sale has been made by an executor or administrator of any property of the estate, real or personal, he must return to probate court, at its next term thereafter, an account of sales, verified by his affidavit. If he neglects to make such return he may be punished by attachment, or his letters may be revoked, one day's notice having been first given him to appear and show cause why such attachment should not issue, or such revocation should not be made.

Account of sale

SEC 224. No executor or administrator must, directly or indirectly, purchase any property of the estate he represents, nor must he be interested in any such sale.

Executor. etc not to be purchaser.

CHAPTER VIII.

POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS AND OF THE MANAGEMENT OF ESTATES.

Sec. 225. Possession of estate by executor or administrator.

Sec. 226. Actions by or against administrator and executor.

Sec. 227. Actions for injuries to property of decedent committed during his lifetime.

Sec 228. Actions for injuries committed by decedent in his lifetime.

Sec. 229. Rights and duties of surviving partner of decedent.

Sec. 230. Action upon bond of prior executor or administrator.

Sec 231. Joinder of parties in actions by or against executor.

Sec. 232. Compounding with debtor, of estate.

Sec. 233. Proceedings against estate of fraudulent and insolvent decedent.

Sec. 234. Security by creditors in such proceedings.

Sec. 235. Disposition of estate recovered in such proceedings.

SEC. 225. The executor or administrator must ake into his possession all the estate of the decedent, eal or personal, and collect all debts due to the decedent or to the estate. For the purpose of bringing uits to quiet title, or for partition of such estate, the possession of the executors or administrators is the possession of the heirs or devisees; such possession by the heirs or devisees is subject however, to the possession of the executor or administrator for the purpose of administration, as provided in this act.

Executor, etc, to take charge of estate.

Executors etc. may sue and be sued for recovery of property

SEC. 226. Actions for the recovery of any property, real or personal, or for the possession thereof, and all actions founded upon contracts, may be maintained by and against executors and administrators in all cases in which the same might have been maintained by or against their respective testators or intestates.

Actions for waste, etc

SEC. 227. Executors and administrators may maintain actions against any person who has wasted, destroyed, taken or carried away or converted to his own use, the goods of the testator or intestate in his lifetime. They may also maintain actions for trespass committed on the real estate of the decedent in his lifetime.

Executor, etc. may be sued for waste etc. committed by decedent.

SEC. 228. Any person, or his personal representatives, may maintain an action against the executor or administrator of any testator or intestate who in his lifetime has wasted, destroyed, taken or carried away, or converted to his own use, the goods or chattels of any such person, or committed any trespass on the real estate of such person.

Partnership: right of survivor: appraisement; account, etc

SEC. 229. When a partnership exists between the decedent, at the time of his death, and any other person, the surviving partner has the right to continue in possession of the partnership, and to settle its business, but the interest of the decedent in the partnership must be included in the inventory and be appraised and appropriated as other property. The surviving partner must settle the affairs of the partnership without delay, and account with the executor or administrator, and pay over such balances as may from time to time be payable to him in right of the decedent Upon the application of the executor or administrator, the probate judge may, whenever it appears necessary, order the surviving partner to render an account, and in case of neglect or refusal may, after notice, compel it by attachment, and the executor or administrator may maintain against him any action which the decedent could have maintained.

Action on bond of former executor, etc.

SEC. 230. An administrator may, in his own name, for the use and benefit of all parties interested in the estate, maintain actions on the bond of an executor, or of any former administrator of the same estate.

What executor need not be made party to actions.

SEC. 231. In actions by or against executors it is not necessary to join those as parties to whom letters were issued, but who have not qualified.

May compound.

SEC. 232. Whenever a debtor of a decedent is unable to pay all his debts, the executor or administrator, with the approbation of the probate court or judge, may compound with him and give him a discharge upon receiving a fair and just dividend of his effects. A compromise may also be authorized when it appears to be just and for the best interest of the estate.

Property fraudulently disposed of by decedent may be recovered

SEC. 233. When there is a deficiency of assets in the hands of an executor or administrator, and when the decedent in his lifetime has conveyed any real estate or any rights or interests therein with intent to defraud his creditors, or to avoid any right, debt, or duty of any person, or has so conveyed such estate that by law the deeds or conveyances are void as against creditors, the executor or administrator must commence and prosecute to final judgment any proper action for the recovery of the same, and may recover for the benefit of the creditors all such real estate so fraudulently conveyed, and may also, for the benefit of the creditors, sue and recover all goods, chattels, rights, or credits which have been so conveyed by the decedent in his lifetime, whatever may have been the manner of such fraudulent conveyance.

Not bound to sue except creditors pay expenses

SEC. 234. No executor or administrator is bound to sue for such estate as is mentioned in the preceding section, for the benefit of the creditors, unless on application of creditors, who must pay such part of the costs and expenses of the suit, or give such security to the executor or administrator therefor, as the probate judge shall direct.

Disposition of property recovered

SEC. 235. All real estate so recovered must be sold for the payment of debts in the same manner as if the decedent had died seized thereof, upon obtaining an order therefor from the probate court, and the proceeds of all goods, chattels, rights, and credits so recovered must be appropriated in payment of the debts of the decedent, in the same manner as other property in the hands of the executor or administrator.

CHAPTER IX.

CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

Sec. 236. Court may authorize completion of contract to convey.
Sec. 237. Petition for conveyance, notice and hearing thereof.
Sec. 238. At the hearing interested parties may contest.
Sec. 239. Decree ordering execution of conveyance.

Sec. 240. Execution and record of conveyance
Sec. 241. Dismissal of action without prejudice to action in district court
Sec. 242. Effect of conveyance made under this chapter.
Sec. 243. Effect of recording copy of the decree.
Sec. 244. Record of not to prevent enforcement by other process.
Sec. 245. Successor of person entitled to conveyance; rights of.
Sec. 246. When decree may direct surrender of possessions.

Executor to perform contracts for conveyance.

SEC. 236. When a person who is bound by contract, in writing, to convey any real estate, dies before making the conveyance, and in all cases where such decedent, if living, might be compelled to make such conveyance, the probate court may make a decree authorizing and directing his executor or administrator to convey such real estate to the person entitled thereto.

Petition.

SEC. 237. On the presentation of a verified petition by any person claiming to be entitled to such conveyance from an executor or administrator, setting forth the facts upon which the claim is predicated, the probate court must appoint a time and place for hearing the petition, at a regular term of the court, and must order notice thereof to be published at least four successive weeks before such hearing, in such newspaper in this territory as he may designate.

Hearing.

SEC. 238. At the time and place appointed for the hearing, or at such other time to which the same may be postponed, upon satisfactory proof, by affidavit or otherwise, of the due publication of the notice, the court must proceed to a hearing, and all persons interested in the estate may appear and contest such petition by filing their objections in writing, and the court may examine, on oath, the petitioner and all who may be produced before him for that purpose.

Decree

SEC. 239. If, after a full hearing upon the petition and objections, and examination of the facts and circumstances of the claim, the court is satisfied that the petitioner is entitled to a conveyance of the real estate described in the petition, a decree authorizing and directing the executor or administrator to execute a conveyance thereof to the petitioner must be made, entered on the minutes of the court, and recorded.

SEC. 240. The executor or administrator must execute the conveyance according to the directions of the decree, a certified copy of which must be recorded with the deed in the office of the recorder of the county where the lands lie, and is *prima facie* evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make the conveyance.

Execution of conveyance

SEC. 241. If, upon hearing in the probate court, as hereinbefore provided, the right of the petitioner to have a specific performance of the contract is found to be doubtful, the court must dismiss the petition without prejudice to the rights of the petitioner, who may, at any time within six months thereafter, proceed in the district court to enforce a specific performance thereof.

If case doubtful action must be brought in district court.

SEC. 242. Every conveyance made in pursuance of a decree of the probate court, as provided in this chapter, shall pass the title to the estate contracted for as fully as if the contracting party himself was still living and executed the conveyance.

Effect of conveyance

SEC. 243. A copy of the decree for a conveyance, made by the probate court and duly certified and recorded in the office of the recorder of the county where the land lies, gives the person entitled to the conveyance a right to the possession of the lands contracted for, and to hold the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

Effect of record of decree.

SEC. 244. The recording of any decree, as provided in the preceding section, shall not prevent the court making the decree from enforcing the same by other process.

Court may enforce decree.

SEC. 245. If the person entitled to conveyance dies before the commencement of proceedings therefor under this chapter, or before the completion of the conveyance, any person entitled to succeed his rights in the contract, or the executor or administrator of such decedent, may, for the benefit of the person so entitled, commence such proceedings or prosecute any already commenced, and the conveyance must be so made as to vest the estate in the persons entitled to it, or in the executor or administrator for their benefit.

Conveyance in case party entitled is dead

SEC. 246. The decree provided for in this chapter may direct the possession of the property therein described to be surrendered to the person entitled thereto, upon his producing the deed and a certified copy of the decree, when, by the terms of the contract, possession is to be surrendered.

Possession in pursuance of decree

CHAPTER X.

ACCOUNTS RENDERED BY ADMINISTRATORS AND EXECUTORS, SETTLEMENTS, AND PAYMENT OF DEBTS OF THE ESTATE—COMPENSATION OF EXECUTORS AND ADMINISTRATORS.

Sec. 247. Personal liability of executor or administrator.
Sec. 248. Executor or administrator chargeable with whole estate except, etc.
Sec. 249. Not to profit or lose by estate.
Sec. 250. Not chargeable with uncollected debts without fault.
Sec. 251. Allowance and compensation of executor.
Sec. 252. Not to purchase any claim.
Sec. 253. Commissions and allowance for extraordinary service.
Sec. 254. Exhibit to be rendered at third term of court.
Sec. 255. Citation to issue in case of failure.
Sec. 256. Petition to compel exhibit of account.
Sec. 257. Citation requiring an account.
Sec. 258. Contesting of account; when letters revoked.
Sec. 259. Upon failure after citation, attachment to issue.
Sec. 260. Annual account; what to contain.
Sec. 261. Account after revocation of letters.
Sec. 262. Upon failure to account letters to be revoked.
Sec. 263. Vouchers to be produced and filed.
Sec. 264. Items of less than twenty dollars allowed without vouchers.
Sec. 265. Time and notice of settlement of account.
Sec. 266. Notice of final settlement and distribution.
Sec. 267. Exceptions to and contest of account.
Sec. 268. Contest by heirs on cause shown; reference.
Sec. 269. Effect of settlement and allowance of account.
Sec. 270. Proof of notice of settlement.
Sec. 271. Sale of personal upon application to sell real property.
Sec. 272. Order to invest moneys of estate.
Sec. 273. Order in which debts must be paid.

Sec. 274. Payment of mortgage lien, etc.
Sec. 275. Apportionment when assets insufficient.
Sec. 276. Time in which claims to be paid.
Sec. 277. Order of court to pay debts; when account deemed final.
Sec. 278. Payment of certain claims into court and of rebate of interest.
Sec. 279. Liability when claim is allowed and ordered paid.
Sec. 280. Remedy when claim is not included in order of payment.
Sec. 281. Distribution after payment of debts.
See. 282. Final account after time has been extended.
Sec. 283. Proceedings upon neglect to render same.

Executor, etc.: when personally liable.

SEC. 247. No executor or administrator is chargeable upon any special promise to answer damages or to pay the debts of the testator or intestate out of his own estate, unless the agreement for that purpose, or some memorandum or note therefor, is in writing, and signed by such executor or administrator, or by some other person by him thereunto specially authorized.

Executor, etc.; with what chargeable.

SEC. 248. Every executor and administrator is chargeable in his own account with the whole of the estate of the decedent which may come into his possession, at the value of the appraisement contained in the inventory, except as provided in the following sections, and with all the interest, profit, and income of the estate.

Not to profit or suffer loss by increase or decrease in value

SEC. 249. He shall not make profit by the increase nor suffer loss by the decrease or destruction, without his fault, of any part of the estate. He must account for the excess when he sells any part of the estate for more than the sppraisement, and if any is sold for less than the appraisement he is not responsible for the loss, if the sale has been justly made.

Not liable for uncollected debts.

SEC. 250. No executor or administrator is accountable for any debts due to the decedent, if it appears that they remain uncollected without his fault.

Shall be allowed expenses and fees.

SEC. 251. He shall be allowed all necessary expenses in the care, management, and settlement of the estate, including reasonable fees paid to attorneys for conducting the necessary proceedings or suit in the probate or other courts, and for his services such fees as provided in this chapter; but when the decedent, by his will, makes some other provision for the compensation of his executor, that shall be full compensation for his services, unless, by a written instrument filed in the probate court, he renounces all claim for compensation provided by the will.

Not to purchase claims against estate.

SEC. 252. No administrator or executor shall purchase any claim against the estate he represents, and if he pays any claim for less than its nominal value, he is only entitled to charge in his account the amount he actually paid.

Compensation

SEC. 253. When no compensation is provided by the will or the executor renounces all claim thereto, he must be allowed commissions upon the amount of the whole estate accounted for by him, as follows: For the first thousand dollars at the rate of seven per cent.; for all above that sum at the rate of four per cent; and the same commission must be allowed administrators. In all cases such further allowance may be made as the probate judge may deem just and reasonable for any extraordinary service; the total amount of such allowance must not exceed the amount of commissions allowed by this section, and that public administrators shall receive the same compensation and allowances as are allowed in this title to other administrators.

Exhibit at third term.

SEC. 254. At the third term of the court after his appointment, and thereafter at any time when required by the court, either upon its own motion or upon the application of any person interested in the estate, the executor or administrator must render, for the information of the court, an exhibit, under oath, showing the amount of money received and expended by him, the amount of all claims presented against the estate, and the names of the claimants, and all other matters necessary to show the condition of its affairs.

Citation in case of failure.

SEC. 255. If the executor or administrator fails to render an exhibit at the third term of the court, the judge of the probate court must cause a citation to be issued requiring him to appear and render it.

Petition for account.

SEC. 256. Any person interested in the estate may, at any time before the final settlement of accounts, present his petition to the probate judge, praying that the executor or administrator be required to appear and render such exhibit, setting forth the facts showing that it is necessary and proper that such an exhibit should be made.

Citation to account.

SEC. 257. If the judge is satisfied, either from the oath of the applicant or from any other testimony offered, that the facts alleged are true, and considers the showing of the applicant sufficient, he must direct a citation to be issued to the executor or administrator, requiring him to appear at some day to be named in the citation, which must be during a term of the court, and render an exhibit as prayed for.

Objections to account.

SEC. 258. When an exhibit is rendered by an executor or administrator, any person interested may appear, and, by objections in writing, contest any account or statement therein contained. The court may examine the executor or administrator, and if he has been guilty of neglect, or has wasted, embezzled, or mismanaged the estate, his letters must be revoked.

Attachment for failure to render exhibit.

SEC. 259. If any executor or administrator neglects or refuses to appear and render an exhibit, after having been duly cited, an attachment may be issued against him, and such exhibit enforced, or his letters may be revoked in the discretion of the court.

Account at expiration of one year.

SEC. 260. Every executor or administrator must render a full account and a report of his administration at the expiration of one year from the time of his appointment. If he fails to present his account the court or judge must compel the rendering of the account by attachment, and any person interested in the estate may apply for and obtain an attachment; but no attachment must issue unless a citation has been first issued, served, and returned, requiring the executor or administrator to appear and show cause why an attachment should not issue. Every account rendered must exhibit not only the debts which have been paid, but also a statement of all debts which have been duly presented and allowed during the period embraced in the account.

Account after authority is revoked

SEC. 261. When the authority of an executor or administrator ceases or is revoked for any reason, he may be cited to account before the probate court, at the instance of the person succeeding to the administration of the same estate, in like manner as he might have been cited by any person interested in the estate during the time he was executor or administrator.

When authority may be revoked

SEC. 262. If the executor or administrator resides out of the county, or absconds, or conceals himself so that the citation cannot be personally served, and neglects to render an account within thirty days after the time prescribed in this chapter, or if he neglects to render an account within thirty days after being committed, where the attachment has been executed, his letters must be revoked.

Vouchers

SEC. 263. In rendering his account the executor or administrator must produce and file vouchers for all charges, debts, claims, and expenses which he has paid, which must remain in the court; and he may be examined on oath touching such payments, and also touching any property and effects of the decedent, and the disposition thereof. When any voucher is required for other purposes, it may be withdrawn on leaving a certified copy on file; if a voucher is lost, or for other good reason cannot be produced on the settlement, the payment may be proved by the oath of any competent witness.

Allowance of items less than $20.

SEC. 264. On the settlement of his account he may be allowed any item of expenditure, not exceeding twenty dollars, for which no voucher is produced, if such item be supported by his own uncontradicted oath, positive to the fact of payment, specifying when, where, and to whom it was made; but such allowance, in the whole, must not exceed five hundred dollars against any one estate.

Appointment and notice of day of settlement

SEC. 265. When any account is rendered for settlement, the court or judge must appoint a day for the settlement thereof. The clerk must thereupon give notice thereof by causing notices to be posted in at least three public places in the county, setting forth the name of the estate, the executor or administrator, and the day appointed for the settlement of the account, which must be on some day of a term of the court. The court or probate judge may order such further notice to be given as may be proper.

Notice in case of final settlement.

SEC. 266. If the account mentioned in the preceding section be for a final settlement, and the estate be ready for distribution, the notice of the settlement must state those facts, and must be served, published, or waived in the same manner as provided in section 180 of this code, relating to sales of property; and on confirmation of the final account, distribution and partition of the estate to all entitled thereto may be immediately had without further notice or proceedings. If, from any cause, the hearing of the account or the partition and distribution be postponed, the order postponing the same to a day certain is notice to all persons interested therein.

Exceptions to account

SEC. 267. On the day appointed, or any subsequent day to which the hearing may be postponed by the court, any person interested in the estate may appear and file his exceptions in writing to the account, and contest the same.

Hearing.

SEC. 268. All matters, including allowed claims not passed upon on the settlement of any former account, or on rendering an exhibit, or on making a decree of sale, may be contested by the heirs for cause shown. The hearing and allegations of the respective parties may be postponed from time to time, when necessary, and the court may appoint one or more referees to examine the accounts, and make report thereon, subject to confirmation, and may allow a reasonable compensation to the referees, to be paid out of the estate of the decedent.

Effect of settlement and allowance of account

SEC. 269. The settlement of the account and the allowance thereof by the court, or upon appeal, is conclusive against all persons in any way interested in the estate· saving, however, to all persons laboring under any legal disability their right to move, for cause, to reopen and examine the account, or to proceed by action against the executor or administrator, either individually or upon his bond, at any time before final distribution and in any action brought by any such person the allowance and settlement of the account is *prima facie* evidence of its correctness.

Proof of notice

SEC. 270. The account must not be allowed by the court until it is first proved that notice has been given as required by this chapter, and the decree must show that such proof was made to the satisfaction of the court, and is conclusive evidence of the fact.

Court may order personal property to be first sold

SEC. 271. Whenever it appears to the court, on any hearing of an application for the sale of real property, that it would be for the interest of the estate that personal property of the estate, or some part of such property, should be first sold, the court may decree the sale of such personal property, or any part of it, and the sale thereof shall be conducted in the same manner as if the application had been made for the sale of such personal property in the first instance.

Moneys may be invested.

SEC. 272. Pending the settlement of any estate, on the petition of any party interested therein, the probate court may order any moneys in the hands of the executors or administrators to be invested for the benfit of the estate in securities of the United States or of this territory. Such order can only be made after publication of notice of the petition in some newspaper to be designated by the judge.

Order in which debts shall be paid

SEC. 273. The debts of the estate must be paid in the following order:

First. Funeral expenses.

Second. Expenses of last sickness.

Third. The wages of each miner, mechanic, salesman, clerk, servant, or laborer, for services rendered within forty days next preceding the death of the employer, not exceeding one hundred dollars.

Fourth. Debts due the county, territory, or United States.

Fifth. All other demands against the estate, except that where a lien exists by mortgage, pledge, attachment, or judgment, such lien shall have preference to the extent of such demand on any specific property to which such lien may attach.

Extent of preference.

SEC. 274. The preference given in the preceding section to a mortgage only extends to the proceeds of the property mortgaged. If the proceeds of such property are insufficient to pay the mortgage, the part remaining unsatisfied must be classed with other demands against the estate.

Dividend.

SEC. 275. If the estate is insufficient to pay all the debts of any one class, each creditor must be paid a dividend in proportion to his claim; and no creditor of any one class shall receive such payment until all those of the preceding class are fully paid.

Payment of expenses of funeral and last sickness.

SEC. 276. The executor or administrator, as soon as he has sufficient funds in his hands, must pay the funeral expenses, and the expenses of the last sickness, and the allowance made to the family of the decedent. He may retain in his hands the necessary expenses of administration, but he is not obliged to pay any other debt, or any legacy, until, as prescribed in this article, the payment has been ordered by the court.

Order for payment of debts.

SEC. 277. Upon the settlement of the accounts of the executor or administrator, at the end of the year, as required in this chapter, the court must make an order for the payment of the debts, as the circumstances of the estate require. If there are not sufficient funds in the hands of the executor or administrator, the court must specify in the decree the sum to be paid to each creditor. If the whole property of the estate be exhausted by such payment or distribution, such account must be considered as a final account, and the executor or administrator is entitled to his discharge on producing and filing the necessary vouchers and proofs, showing that such payments have been made, and that he has fully complied with the decree of the court.

As to disputed or contingent claims.

SEC. 278. If there is any claim not due, or any contingent or disputed claim against the estate, the amount thereof, or such part of the same as the holder would be entitled to if the claim were due, established, or absolute, must be paid into the court, and there remain, to be paid over to the party when he becomes entitled thereto; or, if he fails to establish his claim, to be paid over or distributed as the circumstances of the estate require. If any creditor whose claim has been allowed, but is not yet due, appears and assents to a deduction therefrom of the legal interest for the time the claim has yet to run, he is entitled to be paid accordingly. The payments provided for in this section are not to be made when the estate is insolvent, unless a *pro rata* distribution is ordered.

Executor, etc., liable for debts after order for payment

SEC. 279. When a decree is made by the probate court for the payment of creditors, the executor or administrator is personally liable to each creditor for his allowed claim, or the dividend thereon, and execution may be issued on such decree, as upon a judgment in the district court, in favor of each creditor, and the same proceeding may be had under such execution as if it had been issued from the district court. The executor or administrator is liable therefor, on his bond, to each creditor.

Disposition of claims not included in order for payment of debts.

SEC. 280. When the accounts of the administrator or executor have been settled and an order made for the payment of debts and distribution of the estate, no creditor whose claim was not included in the order for payment has any right to call upon the creditors who have been paid, or upon the heirs, devisees, or legatees, to contribute to the payment of his claim; but if the executor or administrator has failed to give the notice to the creditors, as prescribed in section 148, such creditor may recover on the bond of the executor or administrator the amount of his claim, or such part thereof as he would have been entitled to had it been allowed. This section shall not apply to any creditor whose claim was not due ten months before the day of settlement, or whose claim was contingent and did not become absolute ten months before such date.

Order for payment of legacies.

SEC. 281. If the whole of the debts have been paid by the first distribution, the court must direct the payment of legacies and the distribution of the estate among the heirs, legatees, or other persons entitled, as provided in the next chapter; but if there be debts remaining unpaid, or if, for other reasons, the estate be not in a proper condition to be closed, the court must give such extension of time as may be reasonable for a final settlement of the estate.

Final account

SEC. 282. At the time designated in the last section, or sooner, if within that time all the property of he estate has been sold, or there are sufficient funds in his hands for the payment of all the debts due by the estate, and the estate be in a proper condition to be closed, the executor or administrator must render a final account and pray a settlement of his administration.

Proceedings in case of neglect to render final account.

Sec. 283. If he neglects to render his account, the same proceedings may be had as provided in this chapter in regard to the first account to be rendered by him, and all the provisions of this chapter relative to the last mentioned account, and the notice and settlement thereof, apply to his account presented for final settlement.

CHAPTER XI.

DISTRIBUTION, PARTITION, DISCHARGE OF EXECUTOR OR ADMINISTRATOR.

Sec. 284. Payment of shares upon giving bond.
Sec. 285. Notice of application for same.
Sec. 286. Application may be resisted.
Sec. 287. Hearing; order of payment; costs of proceeding.
Sec. 288. Petition for an order of payment by bondsmen.
Sec. 289. When estate distributed and of the expenses of closing.
Sec. 290. What to contain and effect of decree.
Sec. 291. Proceedings when decedent was a non-resident and left a will.
Sec. 292. Decree made on petition; jurisdiction in partition.
Sec. 293. Payment of taxes a condition precedent to distribution.
Sec. 294. Appointment of commissioners to make partition.
Sec. 295. Petition for partition and notice thereof
Sec. 296. Partition of estate situated in several counties.
Sec. 297. When heirs have conveyed their shares.
Sec. 298. When shares set out by metes and bounds.
Sec. 299. Partition when real estate cannot be divided without injury.
Sec. 300. Payments to equalize partition.
Sec. 301. Sale of estate when it cannot be fairly divided.
Sec. 302. Notice of partition and power of commissioners.

Sec. 303. Report of commissioners; decree on same, and record thereof.
Sec. 304. Partition not necessary unless requested.
Sec. 305. Advancements made to heirs.
Sec. 306. Agent to be appointed, when.
Sec. 307. Bond and compensation of agent.
Sec. 308. Disposition of unclaimed personal estate.
Sec. 309. Annual account of agent: sale of real and personal property.
Sec. 310. Liability of bond of agent.
Sec. 311. Proceedings if claimant appear.
Sec. 312. Discharge of agent.
Sec. 313. Final settlement under this chapter not to prevent the issue of subsequent letters in certain cases.

Payment by legacies after four months.

SEC. 284. At any time after the lapse of four months from the issuing of letters testamentary or of administration, any heir devisee, or legatee, may present his petition to the court for the legacy or share of the estate to which he is entitled, to be given to him upon his giving bonds, with security, for the payment of his portion of the debts of the estate.

Notice of application.

SEC. 285. Notice of the application must be given to the executor or administrator, personally, and to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of an executor or administrator.

Application may be resisted

SEC. 286. The executor or administrator, or any person interested in the estate, may appear at the time named and resist the application, or any other heir, devisee, or legatee, may make a similar application for himself.

Decree.

SEC. 287. If, at the hearing, it appears that the estate is but little indebted, and that the share of the party applying may be allowed to him without loss to the creditors of the estate, the court must make an order in conformity with the prayer of the applicant, requiring:

First. Each heir, legatee, or devisee obtaining such order, before receiving his share or any portion thereof, to execute and deliver, to the executor or administrator a bond in such sum as shall be designated be the probate judge, with sureties to be approved by the judge, payable to the executor or administrator, and conditioned for the payment, whenever required, of his proportion of the debts due from the estate, not exceeding the value or amount of the legacy or portion of the estate to which he is entitled.

Second. The executor or administrator to deliver to the heir, legatee, or devisee, the whole portion of the estate to which he may be entitled, or only a part thereof, designating it. If, in the execution of the order, a partition is necessary between two or more of the parties interested, it must be made in the manner hereinafter prescribed.

Costs

The costs of these proceedings to be paid by the applicant, or, if there be more than one, to be apportioned equally amongst them.

Order for payment of bond and suit therefor

SEC. 288. When any bond has been executed and delivered under the provisions of the preceding section, and it is necessary for the settlement of the estate to require the payment of any part of the money thereby secured, the executor or administrator must petition the court for an order requiring the payment, and have a citation issued and served on the party bound, requiring him to appear and show cause why the order should not be made. At the hearing, the court, if satisfied of the necessity of such payment, must make an order accordingly, designating the amount and giving a time within which it must be paid. If the money is not paid within the time allowed, an action may be maintained by the executor or administrator on the bond.

Distribution

SEC. 289. Upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or of any heir, legatee, or devisee, the court must proceed to distribute the residue of the estate, if any, in the hands of the executor or administrator, among the persons who by law are entitled thereto; and if the decedent has left a surviving child, and the issue of other children, and any of them, before the close of the administration, have died while under age and not having been married, no administration on such deceased child's estate is necessary, but all the estate which such deceased child was entitled to by inheritance must, without administration, be distributed to the other heirs at law. A statement of any receipts and disbursements of the executor or administrator, since the rendition of his final accounts, must be reported and filed at the time of making such distribution, and a settlement thereof, together with an estimate of the expenses of closing the estate, must be made by the court and included in the order or decree; or, the court or judge may order notice of the settlement of such supplementary account, and refer the same as in other cases of the settlement of accounts.

SEC. 290. In the order or decree the court must name the persons and the proportions or parts to which each shall be entitled, and such persons may demand, sue for, and recover their respective shares from the executor or administrator, or any person having the same in possession. Such order or decree is conclusive as to the rights of heirs, legatees, or devisees, subject only to be reversed, set aside, or modified on appeal.

Contents and effect of decree

SEC. 291. Upon application for distribution, after final settlement of the accounts of administration, if the decedent was a non-resident of this territory, leaving a will which has been duly proved or allowed in the state or territory of his residence, and an authenticated copy thereof has been admitted to probate in this territory, and it is necessary, in order that the estate or any part thereof may be distributed according to the will, that the estate in this territory should be delivered to the executor or administrator in the state or place of his residence, the court may order such delivery to be made, and, if necessary, order a sale of the real estate, and a like delivery of the proceeds. The delivery, in accordance with the order of the court, is a full discharge of the executor or administrator with the will annexed, in this territory, in relation to all property embraced in such order, which, unless reversed on appeal, binds and concludes all parties in interest. Sales of real estate ordered by virtue of this section must be made in the same manner as other sales of real estate of decedents by order of the probate court.

Distribution in case of non-resident

SEC. 292. The order or decree may be made on the petition of the executor or administrator, or of any person interested in the estate. Notice of the application must be given by posting or publication, as the court may direct, and for such time as may be ordered. If partition be applied for, as provided in this chapter, the decree of distribution shall not divest the court of jurisdiction to order partition, unless the estate is finally closed.

Petition and notice

SEC. 293. Before any decree of distribution of an estate is made, the probate court must be satisfied, by the oath of the executor or administrator or otherwise, that all territorial, county, and municipal taxes legally levied upon the personal property of the estate have been fully paid.

Taxes to be paid.

SEC. 294. When the estate, real or personal, assigned by the decree of distribution, to two or more heirs, devisees, or legatees, is in common and undivided, and

Partition

the respective shares are not separated and distinguished, partition or distribution may be made by three disinterested persons, to be appointed commissioners for that purpose by the probate court or judge, who must be duly sworn to the faithful discharge of their duties. A certified copy of the order of their appointment, and of the order or decree assigning and distributing the estate, must be issued to them as their warrant, and their oath must be indorsed thereon. Upon consent of the parties, or when the court deems it proper and just, it is sufficient to appoint one commissioner only, who has the same authority and is governed by the same rules, as if three were appointed.

Petition and notice for partition.

SEC. 295. Such partition may be ordered and had in the probate court, on the petition of any person interested. But before commissioners are appointed, or partition ordered by the probate court as directed in this chapter, notice thereof must be given to all persons interested, who reside in this territory, or to their guardians, and to the agents, attorneys, or guardians, if any, in this territory, of such as reside out of the territory, either personally or by public notice, as the probate court may direct. The petition may be filed, attorneys, guardians, and agents appointed, and notice given, at any time before the order or decree of distribution, but the commisssioers must not be appointed until the order or decree is made distributing the estate.

Partition of estate in different counties.

SEC. 296. If the real estate is in different counties, the probate court may, if deemed proper, appoint a commissioner for all, or different commissioners for each county. The estate in each county must be divided separately, among the heirs, devisees, or legatees, as if there was no other estate to be divided, but the commissioner first appointed must, unless otherwise directed by the probate court, make division of such real estate, wherever situated within this territory.

Partition where original interests have been conveyed

SEC. 297. Partition or distribution of the real estate may be made as provided in this chapter, although some of the original heirs, legatees or devisees may have conveyed their shares to other persons, and such shares must be assigned to the person holding the same in the same manner as they otherwise would have been to such heirs, legatees, or devisees.

Shares to be set out.

SEC. 298. When both distribution and partition are made, the several shares in the real and personal estate must be set out to each individual in proportion to his right by metes and bounds, or description, so that the same can be easily distinguished, unless two or more of the parties interested consent to have their shares set out so as to be held by them in common and undivided.

Entire estate may be assigned to one person

SEC. 299. When the real estate cannot be divided without prejudice or inconvenience to the owners, the probate court may assign the whole to one or more of the parties entitled to share therein who will accept it, always preferring the males to the females, and, among children, preferring the elder to the younger. The parties accepting the whole must pay to the other parties interested their just proportion of the true value thereof, or secure the same to their satisfaction, or, in case of the minority of such party, then to the satisfaction of his guardian; and the true value of the estate must be ascertained and reported by commissioners appointed to make partition. If the commissioners are of the opinion that the real estate cannot be divided without prejudice or inconvenience to the owners, they must so report to the court, and recommend that the whole be assigned as herein provided, and must find and report the true value of such real estate. On filing the report of the commissioners, and on making or securing the payment as before provided for, the court, if it appears just and proper, must confirm the report, and thereupon the assignment is complete, and the title to the whole of such real estate vests in the person to whom the same is so assigned.

Partition to be made equal

SEC. 300. When any tract of land or tenement is of greater value than any one's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off by the commissioners appointed to make partition, to any of the parties who will accept it, giving preference as prescribed in the preceding section. The party accepting must pay or secure to the others such sums as the commissioners shall award to make the partition equal, and the commissioners must make their award accordingly; but such partition must not be established by the court until the sums awarded are paid to the parties entitled to the same, or secured to their satisfaction.

Estate may be sold

SEC. 301. When it appears to the court, from the commissioners' report, that it cannot otherwise be fairly divided, and should be sold, the court may order the sale of the whole or any part of the estate, real or personal, by the executor or administrator, or by a commissioner appointed for that purpose, and the proceeds distributed. The sale must be conducted, reported, and confirmed, in the same manner and under the same requirements provided in Chapter VII., of this division.

All persons interested must be notified.

SEC. 302. Before any partition is made, or any estate divided, as provided in this chapter, notice must be given to all persons interested in the partition, their guardians, agents, or attorneys, by the commissioners, of the time and place when and where they shall proceed to make partition. The commissioners may take testimony, order surveys, and take such other steps as may be necessary to enable them to form a judgment upon the matters before them.

Duty of commissioners

Report of commissioners

SEC. 303. The commissioners must report their proceedings, and the partition agreed upon by them, to the probate court, in writing, and the court may, for sufficient reasons, set aside the report, and commit the same to the same commissioners, or appoint others: and when such report is finally confirmed, a certified copy of the judgment or decree of partition made thereon, attested by the clerk, under the seal of the court, must be recorded in the office of the recorder of the county where the lands lie.

Partition not necessary if estate is assigned.

SEC. 304. When the probate court makes a judgment or decree, assigning the residue of any estate to one or more persons entitled to the same, it is not necessary to appoint commissioners to make partition or distribution thereof, unless the parties to whom the assignment is decreed, or some of them, request that such partition be made.

As to advancements made to heirs

SEC. 305. All questions as to the advancements made, or alleged to have been made, by the decedent to his heirs, may be heard and determined by the probate court, and must be specified in the decree assigning and distributing the estate; and the final judgment or decree of the probate court, or, in case of appeal, of the supreme court, is binding on all parties interested in the estate.

Court may appoint agent for absentees.

SEC. 306. When any estate is assigned or distributed by a judgment or decree of the court, as provided in this chapter, to any person residing out of and having no agent in this territory, and it is necessary that some person should be authorized to take possession and charge of the same for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absent person in the distribution.

Agent to give bond

SEC. 307. The agent must first give a bond to the probate judge, to be approved by him, conditioned that he shall faithfully manage and account for the estate. The court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses.

Disposition of unclaimed estate

SEC. 308. When personal property remains in the hands of the agent unclaimed for a year, and it appears to the court that it is for the benefit of those interested, it shall be sold under the order of the court, and the proceeds, after deducting the expenses of the sale allowed by the court, must be paid into the territorial treasury. When the payment is made the agent must take from the treasury duplicate receipts, one of which he must file in the office of the territorial auditor, and the other in the probate court.

Account of agent and order of sale

SEC. 309. The agent must render to the probate court appointing him, annually, an account showing—

First. The value and character of the property received by him, what portion thereof is still on hand, what sold, and for what.

Second. The income derived therefrom.

Third. The taxes and assessments imposed thereon, for what, and whether paid or unpaid.

Fourth. Expenses incurred in the care, protection, and management thereof, and whether paid or unpaid, when filed.

The probate court may examine witnesses and take proofs in regard to the account, and, if satisfied from such accounts and proofs that it will be for the benefit and advantages of the persons interested therein, the court may, by order, direct a sale to be made of the whole or such parts of the real or personal property as shall appear to be proper, and the purchase money to be deposited in the territorial treasury.

Liability of agent

SEC. 310. The agent is liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the proceeds of the sale as required in the preceding sections, and may be sued thereon by any person interested.

Certificate to claimant

SEC. 311. When any person appears and claims the money paid into the treasury, the probate court making the distribution must inquire into such claim, and, being first satisfied of his right thereto, must grant him a certificate to that effect, under its seal; and upon the presentation of the certificate to him, the territorial auditor must draw his warrant on the treasury for the amount.

Final settlement and discharge

SEC. 312. When the estate has been fully administered, and it is shown by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up, under the order of the court, all property of the estate to the parties entitled, and performed all the acts lawfully required of him, the court must make a judgment or decree, discharging him from all liability to be incurred thereafter.

Letters may be issued after final settlement.

SEC. 313. The final settlement of an estate, as in this chapter provided, shall not prevent a subsequent issue of letters testamentary, or of administration, or of administration with the will annexed, if other property of the estate be discovered, or if it become necessary or proper, for any cause, that letters should be again issued.

CHAPTER XII.

ORDERS, DECREES, PROCESS, MINUTES, RECORDS, TRIALS AND APPEALS.

Sec. 314. Orders and decrees; what to contain and how entered.
Sec. 315. Publication; how often to be made.
Sec. 316. Record imparts notice.
Sec. 317. Citations; requisites of.
Sec. 318. May be issued by clerk except, etc.
Sec. 319. How served.
Sec. 320. Personal notice given by citation.
Sec. 321. To be served five days before return
Sec. 322. Description of lands to be sold.
Sec. 323. Rules of practice.
Sec. 324. Civil practice act shall apply to new trials and appeals; when appeals taken; of reversal on appeal.
Sec. 325. Time in which appeal taken.
Sec. 326. Trials of issues of fact; of parties and the judgment.
Sec. 327. Of trial by court and jury and motion for new trial.
Sec. 328. Of the appointment and substitution of attorneys, their fees and duties
Sec. 329. Certified copies of certain decrees to be recorded.
Sec. 330. Discretionary power as to costs; execution for.
Sec. 331. Removal of executor or administrator or guardian for contempt.
Sec. 332. Service on and appearance of guardian.

Orders and decrees.

SEC. 314. Orders and decrees made by the probate court, or the judge thereof, need not recite the existence of facts, or the performance of acts upon which the jurisdiction of the court or judge may depend; but it shall only be necessary that they contain the matters ordered or adjudged, except as otherwise provided in this title. All orders and decrees of the court or judge must be entered at length in the minute book of the court, and upon the close of each term the judge must sign the minutes.

Publication, how often to be made.

SEC. 315. When any publication is ordered, such publication must be made daily, or otherwise, as often during the prescribed period as the paper is regularly issued, unless otherwise provided in this title. The court or judge may, however, order a less number of publications during the period prescribed.

Notice of record dates from filing.

SEC. 316. When it is provided in this title that any order or decree of a probate court or judge, or a copy thereof, must be recorded in the office of the county recorder, from the time of filing the same for record notice is imparted to all persons of the contents thereof.

Citation: how directed and what to contain

SEC. 317. Citations must be directed to the person to be cited, signed by the clerk, and issued under the seal of the court, and must contain—

First. The title of the proceeding.

Second. A brief statement of the nature of the proceeding.

Third. A direction that the person cited appear at a time and place specified.

Citation how issued

SEC. 318. The citation may be issued by the clerk, upon the application of any party, without an order of the judge, except in cases in which such order is by the provisions of this title expressly required.

Service of citation.

SEC. 319. The citation must be served in the manner as a summons in a civil action.

Personal notice given by citation.

SEC. 320. When personal notice is required and no mode of giving it is prescribed in this title, it must be given by citation.

Citation to be served five days before return.

SEC. 321. When no other time is specially prescribed in this title, citations must be served at least five days before the return day thereof.

Only one description of real estate to be sold, necessary,

SEC. 322. When a complete description of the real property of an estate sought to be sold has been given and published in a newspaper, as required in the order to show cause why the sale should not be made, such description need not be published in any subsequent notice of sale or notice of a petition for the confirmation thereof; it is sufficient to refer to the description contained in the first notice, as being proved and on file in the court.

Rules of practice.

SEC. 323. Except as otherwise provided in this title, the provisions of the Civil Practice Act of this territory are applicable to and constitute the rules of practice in the proceedings mentioned in this title.

Appeals to supreme court

SEC. 324. The provisions of the Civil Practice Act of this territory, relative to new trials and appeals, except in so far as they are inconsistent with the provisions of this title, apply to the proceeding mentioned in this title.

An appeal may be taken to the supreme court from a judgment or order of the probate court—

First. Granting, refusing, or revoking letters testamentary, or of administration, or of guardianship.

Second. Admitting, or refusing to admit, a will to probate.

Third. Against or in favor of the validity of a will, or revoking the probate thereof.

Fourth. Against or in favor of setting apart property or making an allowance for a widow or child.

Fifth. Against or in favor of directing the partition, sale, or conveyance of real property.

Sixth. Settling an account of an executor or administrator, or guardian.

Seventh. Refusing, allowing, or directing the distribution or partition of an estate or any part thereof, or the payment of a debt, claim, legacy, or distributive share.

Eighth. Overruling a motion for new trial.

Ninth. Confirming a report of an appraiser, setting apart the homestead.

When the order or decree appointing an executor or administrator, or guardian, is reversed, on appeal, for error, and not for want of jurisdiction of the court, all lawful acts in administration upon the estate performed by such executor or administrator, or guardian, if he have qualified, are as valid as if such order or decree had been affirmed.

Time for taking appeals.

SEC. 325. The appeal must be taken within sixty days after the order, decree, or judgment is entered.

Issues: how tried; judgments.

SEC. 326. All issues of fact joined in the probate court must be tried in conformity with the requirements of this title, and in all such proceedings the party affirming is plaintiff, and the one denying or avoiding is defendant. Judgments therein on the issues joined, and well as for costs, may be entered and enforced by execution or otherwise, by the probate court, as in civil actions.

Trial by court or jury

SEC. 327. If no jury is demanded the court must try the issues joined. If, on written demand, a jury is called by either party, and the issues are not sufficiently made up by the written pleadings on file, the court, on due notice to the opposite party, must settle and frame the issues to be tried, and submit the same, together with the evidence of each party, to the jury, on which they must render a verdict. Either may move for a new trial upon the same grounds and errors and in like manner as provided in the Civil Practice Act of this territory for civil actions.

Attorney for absent heirs, etc ; compensation

SEC. 328. At or before the hearing of petitions and contests for the probate of wills; for letters testamentary or of administration; for sales of real estate, and confirmations thereof; settlements, partitions, and distributions of estates; setting apart homesteads, and all other proceedings where all the parties interested in the estate are required to be notified thereof, the court may, in its discretion, appoint some competent attorney at law to represent, in all such proceedings, the devisees, legatees, heirs, or creditors of the decedent, who are minors and have no general guardian in the county, or who are non-residents of the territory, and those interested who, though they are neither such minors or non-residents, are unrepresented. The order must specify the names of the parties for whom the attorney is appointed, who is thereby authorized to represent such parties in all such proceedings had subsequent to his appointment. The attorney may receive a fee, to be fixed by the court, for his services, which must be paid out of the funds of the estate as necessary expenses of administration, and, upon distribution, may be charged to the party represented by the attorney. If, for any cause, it become necessary, the probate court may substitute another attorney for the one first appointed, in which case the fee must be proportionately divided. The non-appointment of an attorney will not affect the validity of any of the proceedings.

Order affecting real estate to be recorded.

SEC. 329. When a judgment or decree is made setting apart a homestead, confirming a sale, making distribution of real property, or determining any other matter affecting the title to real property, a certified copy of the same must be recorded in the office of the recorder of the county in which the property is situated.

Costs.

SEC. 330. When it is not otherwise prescribed in this title, the probate court, or supreme court, on appeal, may, in its discretion, order costs to be paid by any party to the proceedings, or out of the assets of the assets of the estate, as justice may require Execution for the costs may issue out of the probate court.

Removal of executor, etc. for contempt.

SEC. 331. Whenever an executor, administrator, or guardian is committed for contempt in disobeying any lawful order of the probate court, or the judge thereof, and has remained in custody for thirty days without obeying such order, or purging himself otherwise of the contempt, the probate court may, by order reciting the facts, and without further showing or notice, revoke his letters and appoint some other person entitled thereto, executor, administrator, or guardian, in his stead.

Service upon guardian.

SEC. 332. Whenever an infant, insane or incompetent person, has a guardian of his estate residing in this territory, personal service upon the guardian of any process, notice, or order of the probate court, concerning the estate of a deceased person, in which the ward is interested, is equivalent to service upon the ward; and it is the duty of the guardian to attend to the interests of the ward in the matter. Such guardian may also appear for his ward, and waive any process, notice, or order to show cause which an adult or a person of sound mind might do.

CHAPTER XIII.

PUBLIC ADMINISTRATORS.

Sec. 333. Estates administered by public administrator.
Sec. 334. How to obtain letters, bond and oath.
Sec, 335. Duty of a person in whose house a stranger dies.
Sec. 336. Duties of public administrator under this title.
Sec. 337. Duty when another administrator appointed.
Sec. 338. Civil officers to give him information.
Sec. 339. Must institute necessary suits.
Sec. 340. Party charged with concealing or embezzling estate must be cited to appear.
Sec. 341. Examination and punishment for refusal to appear.

Sec. 342. Court may order property turned over to regular administrator.
Sec. 343. Semi-annual returns to be made and published.
Sec. 344. Moneys to be deposited with county treasurer; his duties and fees, etc.
Sec. 345. Public administrator to be entirely disinterested; his affidavit of same.
Sec. 346. Monthly accounting with the county clerk.
Sec. 347. To pay over unclaimed money to territorial treasurer; proceedings upon his failure.
Sec. 348. Fees of all officers to be paid out of assets of estate.
Sec. 349. May administer oaths.
Sec. 350. Preceding chapters applicable when no provision in this.

NOTE —See Chapter XX., Sections 560 to 566.

Public administrator to take charge of certain estates

SEC. 333. Every public administrator, duly elected and qualified, must take charge of the estates of persons dying within his county, as follows:

First. Of the estates of decedents for which no administrators are appointed, and which, in consequence thereof, are being wasted, uncared for, or lost.

Second. Of the estate of decedents who leave no known heirs, or are strangers.

Third. Of estates ordered into his hands by the probate court.

Fourth. Of estates upon which letters of administration have been issued to him by the probate court.

Letters to be taken out.

SEC. 334. Whenever a public administrator takes charge of an estate, which he is entitled to administer, without letters of administration being issued, or under order of the court, he must, with all convenient dispatch, procure letters of administration thereon, in a like manner and on like proceedings as letters of administration are issued to other persons. His official bond and oath are in lieu of the administrator's bond and oath, but when real estate is ordered to be sold, another bond may be required by the court.

Duty of person in whose house stranger dies

SEC. 335. Whenever a stranger, or person without known heirs, dies intestate in the house or premises of another, the possessor of the premises or any one knowing the facts, must give immediate notice thereof to the public administrator of the county; and, in default of so doing, he is liable for any damage that may be sustained thereby, to be recovered by the administrator or any party interested.

Inventory

SEC. 336. The public administrator must make and return a perfect inventory of all estates taken into his possession, administer and account for the same according to the provisions of this title, subject to the control and direction of the probate court.

Estate to be turned over to another, when

SEC. 337. If, at any time, letters testamentary or of administration are regularly granted to any other person on an estate of which the public administrator has charge, he must, under the order of the probate court, account for, pay, and deliver to the executor or administrator thus appointed, all the money, property, papers, and estate of every kind, in his possession or under his control.

Information to be given by civil officers

SEC. 338. All civil officers must inform the public administrator of all property known to them, belonging to a decedent, which is liable to loss, injury, or waste, and which by reason thereof ought to be in the possession of the public administrator.

Suits by public administrator.

SEC. 339. The public administrator must institute all suits and prosecutions necessary to recover the property, debts, papers, or other estate of the decedent.

Order to examine person suspected embezzling, etc

SEC. 340. When the public administrator complains to the probate judge, on oath, that any person has concealed, embezzled, or disposed of, or has in his possession any money, goods, property, or effects, to the possession of which such administrator is entitled in his official capacity, the judge may cite such person to appear before the probate court, and examine him on oath touching the matter of such complaint.

Punishment for refusing to attend.

SEC. 341. All such interrogations and answers must be reduced to writing and signed by the party examined, and filed in the probate court. If the person so cited refuses to appear and submit to such an examination, or to answer such interrogatories as may be put to him touching the matter of such complaint, the court may commit him to the county jail, there to remain in close custody until he submits to the order of the court.

Order on public administrator to account.

SEC. 342. The probate court may at any time order the public administrator to account for and deliver all the money and property of an estate in his hands to the heirs, or to the executors or administrators regularly appointed.

Returns to be made and published by public administrator.

SEC. 343. The public administrator must, once in every six months, make to the probate judge, under oath, a return of all estates of decedents which have come into his hands, the value of the same, the money which has come into his hands from such estate, and what he has done with it, and the amount of his fees and expenses incurred, and the balance, if any, remaining in his hands, publish the same six times in some newspaper in the county, or, if there is none, then post the same, legibly written or printed, in the office of the county clerk of the county.

Money to be deposited with county treasurer.

SEC. 344. It is the duty of every public administrator, as soon as he shall receive the same, to deposit with the county treasurer of the county in which the probate proceedings are pending, all moneys of the estate not required for the current expenses of the administration; and such moneys may be drawn upon the order of the executor or administrator, countersigned by the probate judge, when required for the purposes of administration. It shall be the duty of the county treasurer to receive and safely keep all such moneys and pay them out upon the order of the executor or administrator, when countersigned by the probate judge, and not otherwise, and to keep an account with each estate of all moneys received and paid to him; and the county treasurer shall be allowed one per cent. upon all moneys received and kept by him, and no greater fees for any services herein provided. The money thus deposited may, upon order of the probate court, be invested, pending the proceedings, in securities of the United States, or of this territory, when such investment is deemed by the court to be for the best interests of the estate. After a final settlement of the affairs of any estate, if there be no heirs or other claimants thereof, the county treasurer shall pay into the territorial treasury all moneys and effects in his hands belonging to the estate, upon order of the probate court, and if any such moneys and effects escheat to the territory, they must be disposed of as other escheated estates.

Escheat.

Public administrator not to be interested in expenditures.

SEC. 345. The public administrator must not be interested in expenditures of any kind made on account of any estate he administers; nor must he be associated, in business or otherwise, with any one who is so interested, and he must so attach to his report and publication, made in accordance with the preceding section, his affidavit to that effect.

To settle with county clerk

SEC. 346. Public administrators are required to account, under oath, and to settle and adjust their accounts, relating to the care and disbursement of money or property belonging to estates in their hands, with the county clerks of their respective counties, on the first Monday in each month; and they must pay to the territorial treasurer any money remaining in their hands, of an estate unclaimed, as provided in sections 308 to 311, both inclusive.

Proceedings against public administrator for failure to pay over

SEC. 347. When it appears from the returns made in pursuance of the foregoing sections, that any money remains in the hands of the public administrator (after final settlement of the estate), unclaimed, which should be paid over to the territorial treasurer, the probate judge must order the same to be paid over to the territorial treasurer, and, on failure of the public administrator to comply with the order within ten days after the same is made, the district attorney for the county must immediately institute the requisite legal proceedings, against the public administrator, for a judgment against him and the sureties on his official bond, in the amount of money so withheld, and costs.

Fees to be paid

SEC. 348. The fees of all officers chargeable to estates in the hands of public administrators must be paid out of the assets thereof so soon as the same come into his hands.

Oaths.

SEC. 349. Public administrators may administer oaths in regard to all matters touching the discharge of their duties or the administration of estates in their hands.

Proceedings of preceding chapters applicable.

SEC. 350. When no direction is given in this chapter for the government or guidance of a public administrator in the discharge of his duties, or for the administration of an estate in his hands, the provisions of the preceding chapters of this title must govern.

CHAPTER XIV.

GUARDIANS—SALE OF PROPERTY AND DISPOSITION OF PROCEEDS—MISCELLANEOUS PROVISIONS.

Sec. 351. Petition and notice to appoint a guardian for a minor.
Sec. 352. When judge may appoint and minor nominate.
See. 353. When judge shall have exclusive right to appoint.
Sec. 354. Upon arriving at fourteen, minor may choose, subject to approval of judge.
Sec. 355. Father or mother; when entitled to be guardian.
Sec. 356. When appointed guardian to have custody and tuition of his ward.
Sec. 357. For what length of time guardian to have charge.

Sec. 358. Bond of guardian; conditions of; oath.
Sec. 359. By consent, judge may impose further conditions on guardian.
Sec. 360. Letters, bond, certificates, etc., to be recorded.
Sec. 361. Maintenance of minor while father living.
Sec. 362. Powers and duties of testamentary guardian modified by will.
Sec. 363. Power of courts to appoint guardian ad litem not impaired.
Sec. 364. Petition for guardian; hearing and notice.
Sec. 365. Appointment of guardian after the hearing.
Sec. 366. Powers of guardian; restoration of ward and discharge of guardian.
Sec. 367. Out of what property debts of ward to be paid.
Sec. 368. General powers of guardian.
Sec. 369. Must manage estate frugally, care for ward and family, and may sell real estate.
Sec. 370. Guardian to have credit for advances, may be compelled to perform duty; third party may supply necessaries when guardian neglects.
Sec. 371. May join in and assent to partition.
Sec. 372. Annual and semi-annual return of inventory of estate.
Sec. 373. Annual account of guardian.
Sec. 374. Allowance of account of joint guardians,
Sec. 375. Expenses and compensation of guardian.
Sec. 376. When real or personal estate may be sold.
Sec. 377. When guardian may procure an order to sell real estate.
Sec. 378. Application of the proceeds of sale.
Sec. 379. Investment of proceeds.
Sec. 380. Petition of guardian for order of sale.
Sec. 381. Order for next of kin to appear and show cause why sale should not be made.
Sec. 382. Service of order to show cause; when not essential.
Sec. 383. Hearing of petition.
Sec. 384. Examination and attendance of witnesses.

Sec. 385. Costs; how awarded when party objects.
Sec. 386. Order of sale, either public or private.
Sec. 387. Prior to sale, guardian to give bond.
Sec. 388. Proceedings, unless otherwise provided in this chapter to be governed by probate act.
Sec. 389. Limitation of order of sale.
Sec. 390. Terms of sales and security on deferred payments.
Sec. 391. Moneys may be ordered invested on application of guardian or interested party.
Sec. 392. On application of a friend or party interested in his estate, a guardian may be appointed for absent ward.
Sec. 393. Same powers as guardians of resident wards.
Sec. 394. Bond of such guardian.
Sec. 395. Extent of guardianship first lawfully granted.
Sec. 396. Removal of property of non-resident ward.
Sec. 397. Proceedings necessary for such purpose.
Sec. 398. Order for removal discharges local guardian and others.
Sec. 399. Examination of persons suspected of concealing or embezzling property of ward.
Sec. 400. Of removal and resignation of guardians.
Sec. 401. Guardianship; how terminated.
Sec. 402. When new bond given and sureties discharged.
Sec. 403. Guardian's bond filed and breach of prosecuted.
Sec. 404. Limitation of action on guardian's bond.
Sec. 405. Limitation of action to recover estate sold by guardian.
Sec. 406. More than one guardian may be appointed.
Sec. 407. Power of probate judge at chambers.
Sec. 408. Justification of sureties.

Appointment of guardians for minors.

SEC. 351. The probate judge of each county when it appears necessary or convenient, may appoint guardians for the persons and estates, or either, or both of them, of minors who have no guardians legally appointed by will, or deed, and who are inhabitants or residents of the county, or who reside without the territory and have estate within the county. Such appointment may be made on the petition of a relative or other person in behalf of such minor. Before making such appointment the judge must cause such notice as he deems reasonable to be given to the relatives of the minor residing in the county, and to any person having care of such minor.

When minor may appoint guardian

SEC. 352. If the minor is under the age of fourteen years the probate judge may nominate and appoint his guardian. If he is above the age of fourteen years, he may nominate his own guardian, who, if approved by the judge, must be appointed accordingly.

When judge may appoint.

SEC. 353. If the guardian nominated by the minor is not approved by the judge, or, if the minor resides out of the territory, or if after being duly cited by the judge, he neglects for ten days to nominate a suitable person, the judge may nominate and appoint the guardian,, in the same manner as if the minor were under the age of fourteen years.

Nomination by minor after attaining 14 years of age.

SEC. 354. When a guardian has been appointed by the court for a minor under the age of fourteen years, the minor, at any time after he attains that age, may appoint his own guardian, subject to the approval of the probate judge.

Father or mother entitled to guardianship

SEC. 355. The father of the minor, if living, and, in case of his decease, the mother, while she remains unmarried, being themselves respectively competent to transact their own business, and not otherwise unsuitable, must be entitled to the guardianship of the minor.

In case minor has no father or mother

SEC. 356. If the minor has no father or mother living, competent to have the custody and care of his education, the guardian appointed shall have the custody and tuition of his ward.

Power of guardian.

SEC. 357. Every guardian appointed shall have the custody and tuition of the minor and the care and management of his estate, until such minor arrives at the age of majority or marries, or until the guardian is legally discharged.

Bond of guardian

SEC. 358. Before the order appointing any person guardian, under this chapter takes effect, and before letters issue, the judge must require of such person a bond to the minor, with sufficient sureties, to be approved by the judge, and in such sum as he shall order, conditioned that the guardian will faithfully execute the duties of his trust according to law; and the following conditions shall form a part of such bond without being expressed therein:

First. To make an inventory of all the estate, real and personal, of his ward, that comes to his possession or knowledge, and to return the same within such time as the judge may order.

Second. To dispose of and manage the estate according to law and for the best interest of the ward, and faithfully to discharge his trust in relation thereto, and also in relation to the care, custody, and education of the ward.

Third. To render an account, on oath, of the property, estate, and moneys of the ward in his hands, and all proceeds or interest derived therefrom, and of the management and disposition of the same, within three months after his appointment, and at such other times as the court directs, and at the expiration of his trust to settle his accounts with the probate judge, or with the ward, if he be of full age, or his legal representatives, and to pay over and deliver all the estate, moneys, and effects remaining in his hands, or due from him on such settlement, to the person or persons who are lawfully entitled thereto.

Letters of guardianship.

Upon filing the bond, duly approved, letters of guardianship must issue to the person appointed. In form the letters of guardianship must be substantially the same as letters of administration, and the oath of the guardian must be endorsed thereon, that he will perform the duties of his office as such guardian according to law.

Conditions in order appointing guardian.

SEC. 359. When any person is appointed guardian of a minor, the probate judge may, with the consent of such person, insert in the order of appointment conditions otherwise obligatory, providing for the care, treatment, education, and welfare of the minor, and to perform such conditions is a part of the duties of the guardian, for the faithful performance of which he and the sureties on his bond are responsible

Letters and bonds to be recorded.

SEC. 360. All letters of guardianship issued, and all guardians' bonds executed, under the provisions of this chapter, with the affidavits and certificates thereon, must be recorded by the clerk of the probate court having jurisdiction of the persons and estates of the wards.

Maintenance of minor out of his own income.

SEC. 361. If any minor, having a father living, has property, the income of which is sufficient for his maintenance and education in a manner more expensive than his father can reasonably afford, regard being had to the situation of the father's family, and to all the circumstances of the case, the expenses of the education and maintenance of such minor may be defrayed out of the income of his own property, in whole or in part, as judged reasonable, and must be directed by the probate court, and the charges therefor may be allowed accordingly, in the settlement of the accounts of his guardian.

Bonds and powers of testamentary guardian.

SEC. 362. Every testamentary guardian must give bond and qualify, and has the same powers and must perform the same duties, with regard to the person and estate of his ward, as guardians appointed by the probate court, except so far as their powers and duties are legally modified, enlarged, or changed by the will by which such guardian was appointed.

Power to appoint guardian to defend suit.

SEC. 363. Nothing contained in this chapter affects or impairs the power of any court to appoint a guardian to defend the interest of any minor interested in any suit or matter pending therein.

Guardian for insane and other incompetent persons.

SEC. 364. When it is represented to the probate judge, upon verified petition of any relative or friend, that any person is insane, or, from any cause, mentally incompetent to manage his property, the judge must cause a notice to be given to the supposed incompetent person of the time and place of hearing the case, not less than five days before the time so appointed, and such person, if able to attend, must be produced before him on the hearing.

Appointment by probate judge.

SEC. 365. If, after a full hearing and examination upon such petition, it appears to the probate judge that the person in question is incapable of taking care of himself and managing his property, he must appoint a guardian of his person and estate, with the powers and duties in this chapter specified.

Powers of such guardians

SEC. 366. Every guardian appointed as provided in the preceding section has the care and custody of the person of his ward, and the management of all his estate, until such guardian is legally discharged, and he must give bond to such ward in like manner and with like conditions as before described with respect to the guardian of a minor.

Petition to determine fact of restoration to capacity.

Any person who has been declared insane, or the guardian or any relative of such person within the third degree, or any friend, may apply, by petition to the probate judge of the county in which he was declared insane, to have the fact of his restoration to capacity judicially determined. The petition shall be verified and shall state that such person is then sane. Upon receiving the petition the judge must appoint a day for the hearing, and, if the petitioner request it, shall order an investigation before a jury, which shall be summoned and impanelled in the same manner as juries are summoned and impaneled in other cases in the probate court. The judge shall cause notice of the trial to be given to the guardian of the petitioner, if there be a guardian, and to his or her husband or wife, if there be one, and to his or her father or mother, if living in the county. On the trial the guardian or relative of the petitioner, and, in the discretion of the judge, any other person, may contest the right of the petitioner to the relief demanded. Witnesses may be required to appear and testify as in other cases, and may be called and examined by the judge of his own motion. If it be found that the petitioner be of sound mind and capable of taking care of himself and his property, his restoration to capacity shall be adjudged, and the guardianship of such person, if such person be not a minor, shall cease.

Guardian to pay debts out of ward's estate.

SEC. 367. Every guardian appointed under the provisions of this chapter, whether for a minor or any other person, must pay all just debts due from the ward out of his personal estate and the income of his real estate, if sufficient; if not, then out of his real estate, upon obtaining an order for the sale thereof, and disposing of the same in the manner provided in this title for the sale of real estate of decedents.

Guardian to recover debts due his ward and represent him

SEC. 368. Every guardian must settle all accounts of the ward, and demand, sue for, and receive all debts due to him, or may, with the approbation of the probate judge, compound for the same, and give discharges to the debtors on receiving a fair and just dividend of his estate and effects; and he must appear for and represent his ward in all legal suits and proceedings, unless another person is appointed for that purpose as guardian or next friend.

Guardian to manage estate and maintain ward.

SEC. 369. Every guardian must manage the estate of his ward frugally and without waste, and apply the income and profits thereof, as far as may be necessary, for the comfortable and suitable maintenance and support of the ward and his family, if there be any; and if such income and profits be insufficient for that purpose, the guardian may sell the real estate upon obtaining an order of the court therefor, as provided, and must apply the proceeds of such sale, as far as may be necessary, for the maintenance and support of the ward and his family, if there be any.

SEC. 370. When a guardian has advanced for the necessary maintenance, support, or education of his ward, an amount not disproportionate to the value of his estate, or his condition of life, and the same is made to appear to the satisfaction of the court, by proper vouchers and proofs, the guardian must be allowed credit therefor in his settlements. Whenever a guardian fails, neglects, or refuses to furnish suitable and necessary maintenance, support, or education for his ward, the court may order him to do so, and enforce such order by proper process. Whenever any third person, at his request, supplies a ward with such suitable and necessary maintenance, support, or education, and it is shown to have been done after refusal or neglect of the guardian to supply the same, the court may direct the guardian to pay therefor out of the estate, and enforce such payment by due process.

Guardian to be allowed credit for advances, and may be compelled to pay for maintenance of ward.

SEC. 371. The guardian may join in and assent to a partition of the real estate of the ward whenever such assent may be given by any person.

Guardian may assent to partition

SEC. 372. Every guardian must return to the probate court an inventory of the estate of his ward within three months after his appointment, and annually thereafter. When the value of the estate exceeds the sum of twenty thousand dollars, semi-annual returns must be made to the probate court. The probate court may, upon application made for that purpose by any person, compel the guardian to render an account to the probate court of the estate of his ward. The inventories and accounts so to be returned or rendered must be sworn to by the guardian. All the estate of the ward, described in the first inventory, must be appraised by appraisers appointed, sworn, and acting in the manner provided for regulating the settlement of the estate of decedents; such inventory, with the appraisement of the property therein described, must be recorded by the clerk of the probate court in a proper book kept in his office for that purpose. Whenever any property of the estate of any ward is discovered, not included in the inventory of the estate already returned, and whenever any other property has been succeeded to or acquired by any ward for his benefit, the like proceedings must be had for the return and appraisement thereof that are herein provided in relation to the first inventory and return.

Inventory.

SEC. 373. The guardian must, upon the expiration of a year from the time of appointment, and as often thereafter as he may be required, present his account to the probate court for settlement and allowance.

Settlements.

Allowance of accounts of joint guardians

SEC. 374. When an account is rendered by two or more joint guardians, the probate judge may, in his discretion, allow the same upon the oath of any of them.

Compensation and expenses of guardians.

SEC. 375. Every guardian must be allowed the amount of his reasonable expenses incurred in the execution of his trust, and he must also have such compensation for his services as the court in which his accounts are settled deems just and reasonable.

May sell property in certain cases.

SEC. 376. When the income of an estate under guardianship is insufficient to maintain the ward and his family, or to maintain and educate the ward, when a minor, his guardian may sell his real or personal estate for that purpose, upon obtaining an order therefor.

Sale of real estate to be made upon order of court.

SEC. 377. When it appears to the satisfaction of the court, upon the petition of the guardian, that for the benefit of his ward his real estate, or some part thereof, should be sold, and the proceeds thereof put out at interest, or invested in some productive stock, or in the improvement or security of any other real estate of the ward, his guardian may sell the same for such purpose, upon obtaining an order therefor.

Disposition of proceeds of sale

SEC. 378. If the estate is sold for the purposes mentioned in this article, the guardian must apply the proceeds of the sale to such purposes as far as necessary, and put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital is wanted for the maintenance of the ward and his family, or the education of his children, or for the education of the ward, when a minor, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

Investment of proceeds of sale.

SEC. 379. If the estate is sold for the purpose of putting out or investing the proceeds, the guardian must make the investment according to his best judgment, or in pursuance of any order that may be made by the probate court.

Order for sale: how obtained.

SEC. 380. To obtain an order for such sale the guardian must present to the probate court of the county in which he was appointed guardian a verified petition therefor, setting forth the condition of the estate of his ward, and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale.

Notice to next of kin

SEC. 381. If it appear to the court or judge, from the petition, that it is necessary or would be beneficial to the ward that the real estate, or some part of it, should be sold, or that the real and personal estate should be sold, the court or judge must thereupon make an order directing the next of kin of the ward, and all persons interested in the estate, to appear before the court at a time and place therein specified, not less than four, nor more than eight weeks from the time of making such order, to show cause why an order should not be granted for the sale of such estate. If it appear that it is necessary, or would be beneficial to the ward, to sell the personal estate or some part of it, the court must order the sale to be made.

Order of sale.

SEC. 382. A copy of the order must be personally served on the next of kin of the ward, and all persons interested in the estate, at least fourteen days before the hearing of the petition, or must be published at least three successive weeks in a newspaper published in the county, or if there be none printed in the county, then in such newspaper as may be specified by the court or judge in the order. If written consent to making the order of sale is subscribed by all persons interested therein, and the next of kin, notice need not be served or published.

Copy of order to be served, published or consent filed

SEC. 383. The probate court, at the time and place appointed in the order, or such other time to which the hearing is postponed, upon proof of the service or publication of the order, must hear and examine the proof and allegations of the petitioner and of the next of kin, and of all other persons interested in the estate who oppose the application.

Hearing of application.

SEC. 384. On the hearing the guardian may be examined on oath, and witnesses may be produced and examined by either party, and process to compel their attendance and testimony may be issued by the probate court or judge, in the same manner and with like effect as in other cases provided for in this title.

Who may be examined

SEC. 385. If any person appears and objects to the granting of any order prayed for under the provisions of this chapter, and it appears to the court that either the petition or the objection thereto is sustained, the court may, in granting or refusing the order, award costs to the party prevailing, and enforce the payment thereof.

Costs.

SEC. 386. If, after a full examination, it appears necessary, or for the benefit of the ward, that his real estate, or some part thereof, should be sold, the court may grant an order therefor, specifying therein the

Contents of order of sale.

—24

causes or reasons why the sale is necessary or beneficial, and may, if the same has been prayed for in the petition, order such sale to be made, either at public or private sale.

Bond before selling.

SEC. 387. Every guardian, authorized to sell real estate must, before the sale, give bond to the probate judge, with sufficient surety, to be approved by him, with conditions to sell the same in the manner, and to account for the proceeds of the sale, as provided for in this chapter and Chapter VII. of this title.

Proceedings to conform to title concerning estates of deceased persons.

SEC. 388. All the proceedings under the petitions of guardians for sales of property of their wards, giving notice, and the hearing of such petitions, granting or refusing the order of sale, directing the sale to be made at public or private sale, re-selling the same property, return of sale and application for confirmation thereof, notice and hearing of such application, making orders, rejecting or confirming sales, and reports of sales, ordering and making conveyances of property sold, accounting and the settlements of accounts, must be had and made as required by the provisions of this title concerning estates of decedents unless otherwise specially provided in this chapter.

Limit of order of sale.

SEC. 389. No order of sale granted in pursuance of this article continues in force more than one year after granting the same without a sale being had.

Terms of sale

SEC. 390. All sales of real estate of wards must be for cash, or for part cash and part deferred payments not to exceed three years, bearing date from date of sale, as in the discretion of the probate judge is most beneficial to the ward. Guardians making sales must demand and receive from the purchasers bond and mortgage on the real estate sold, with such additional security as the judge deems necessary, and sufficient to secure the faithful payment of the deferred payments and the interest thereon.

Order may be made for investment of ward's money.

SEC. 391. The probate court, on the application of a guardian or any person interested in the estate of any ward, after such notice to persons interested therein as the probate judge shall direct, may authorize and require the guardian to invest the proceeds of sales, and any other of his ward's money in his hands, in real estate or in any other manner most to the interest of all concerned therein; and the probate court may make such other orders, and give such directions as are needful for the management, investment, and disposition of the estate and effects as circumstances require.

Guardians of non-resident wards.

SEC. 392. When a person liable to be put under guardianship, according to the provisions of this chapter, resides without this territory and has estate therein, any friend of such person, or any one interested in his estate, in expectancy or otherwise, may apply to the probate judge of any county in which there is any estate of such absent person, for the appointment of a guardian; and if after notice given to all interested, in such manner as the judge orders, and a full hearing and examination, it appears proper, a guardian for such absent person may be appointed.

Powers same as other guardians.

SEC. 393. Every guardian appointed under the preceding section has the same powers and performs the same duties with respect to the estate of the ward found within this territory, and with respect to the person of the ward, if he shall have come to reside therein, as are prescribed with respect to any other guardian appointed under this chapter.

Bond

SEC. 394. Every guardian must give bond to the ward in the manner and with the like conditions as hereinbefore provided for other guardians except that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian, must be confined to such estate and effects as come to his hands in this territory.

Extent of guardianship.

SEC. 395. The guardianship which is first lawfully granted of any person residing out of this territory, extends to all the estate of the ward within the same, and excludes the jurisdiction of the probate court of every other county.

Removal or sale of property of non-resident ward

SEC. 396. When the guardian and ward are both non-residents, and the ward is the owner of or entitled to property in this territory which may be removed to another state or territory or foreign country, or sold without conflict with any restriction or limitation thereupon and without injuring the right of the ward thereto, such property may be removed to the state or territory or foreign country of the residence of the ward, or sold and the proceeds of the sale thereof removed to such state or territory or foreign country, upon the application of the guardian to the probate judge of the county in which the estate of the ward or the principal part thereof is situated.

NOTE—Section 396 from act of March 5th. 1887.

Application.

SEC. 397. The application must be made upon ten days notice to the resident executor, administrator, or guardian, if there be such, otherwise without notice, and upon such application the non-resident guardian must produce and file a certificate under the hand of the clerk or judge and seal of the court from which his appointment was derived, showing:

First. A transcript of the record of his appointment.

Second. That he has entered upon the discharge of his duties.

Third. That he is entitled by the laws of the state or territory or foreign country of his appointment to the possession of the estate of his ward, or must produce and file a certificate, under the hand of the clerk or judge and seal of the court having jurisdiction in the state or territory or foreign country of his residence, of the estate of persons under guardianships, or of the highest court of such state or territory or foreign country, showing that, by the laws of such state, territory or foreign country, the applicant is entitled to the custody of the estate of his ward without the appointment of any court.

The said application shall also contain a description of the property of such ward, together with an estimate of its value. Upon such application, unless good cause to the contrary is shown, the probate judge must make an order granting to such guardian leave to take and remove the property of his ward to the state or territory or foreign country of his residence, or to sell the same as may be requested or prayed for in said application, which order shall be authority to such guardian to sue for and receive the property therein described in his own name, for the use and benefit of his ward.

Property authorized to be sold under the provisions of this section may be sold at public or private sale with or without notice, as the order of the probate judge may direct, and upon such terms as such order may prescribe, but before any sale hereunder, the property must be appraised by three appraisers to be appointed by the probate judge granting such order, either before or after the issuance of the order of sale, and the property must not be sold for less than ninety per cent. of the appraised value thereof.

Upon making the sale of such property or any part thereof, the guardian shall make a report thereof to the probate judge showing the person or persons to whom, and the price or prices for which the said property, or any part thereof, was sold. Thereupon the probate judge shall proceed to hear such report, and if the sale appears to have been fairly conducted, and the price or prices obtained appear to be the reasonable market value of the property sold, the probate judge shall make an order confirming such sale or sales, and directing a proper deed or deeds of real property, or a proper bill of sale or other transfer if personal property to be made, conveying the property sold to the purchaser or purchasers.

A certified copy of each order confirming the sale of real property shall be recorded in the office of the county recorder of the county where such real property is situated. The guardian shall make and deliver to the purchaser or purchasers the deed or other conveyance authorized by the said order and in conformity thereto, and thereupon all the right, title, interest and estate of such ward shall be fully vested in such purchaser or purchasers.

Any guardian mentioned in this section may by power of attorney, executed and acknowledged in the manner provided by law for the execution and acknowledgment of conveyances of real property, empower and authorize any person capable in law of executing a power of attorney for the sale of real estate, as attorney in fact to do any or all of the things that the guardian himself might otherwise do, and in such case the acts and proceedings of such attorney in fact have the same force and effect as the acts and proceedings of such guardian.

NOTE—Section 397 from act of March 5th, 1887.

Discharge of persons in possession.

SEC. 398. Such order is a discharge of the executor, administrator, local guardian, or other person in whose possession the property may be at the time the order is made, on filing with the probate court the receipt therefor, of the guardian of such absent ward.

Examination of persons suspected of embezzlement, etc

SEC. 399. Upon complaint made to him by any guardian, ward, creditor, or other person interested in the estate, or having a prospective interest therein as heir or otherwise, against any one suspected of having concealed, embezzled, or conveyed away any of the money, goods, or effects, or an instrument in writing belonging to the ward, or to his estate, the probate judge may cite such suspected person to appear before him, and may examine and proceed with him on such charge in the manner provided in this title with respect to persons suspected, of and charged with, concealing or embezzling the effects of decedent.

Removal and resignation and surrender of estate.

SEC. 400. When a guardian, appointed either by the testator or the probate judge, becomes insane or otherwise incapable of discharging his trust, or unsuitable therefor, or has wasted or mismanaged the estate, or failed for thirty days to render an account or make a return, the probate court may, upon such notice to the guardian as the court may require, remove him, and compel him to surrender the estate of the ward to the person found to be lawfully entitled thereto. Every guardian may resign, when it appears proper to allow the same; and upon the resignation or removal of a guardian, as herein provided, the probate court, or the judge thereof, may appoint another in the place of the guardian who has resigned or has been removed.

Termination of guardianship.

SEC. 401. The marriage of a minor ward terminates the guardianship, and the guardian of an insane or other person may be discharged by the probate judge when it appears to him, on the application of the ward or otherwise, that the guardianship is no longer necessary.

New bond, when required

SEC. 402. The probate judge may require a new bond to be given by a guardian whenever he deems it necessary, and may discharge the existing sureties from further liability, after due notice given as he may direct, when it shall appear that no injury can result therefrom to those interested in the estate.

Bond to be filed. action thereon.

SEC. 403. Every bond given by a guardian must be filed and preserved in the office of the clerk of the probate court of the county, and in case of a breach of a condition thereof, may be prosecuted for the use and benefit of the ward, or of any person interested in the estate.

Limitation of action on bond

SEC. 404. No action can be maintained against the sureties on any bond given by a guardian unless it be commenced within three years from the discharge or removal of the guardian; but if at the time of the discharge or removal of the guardian the person entitled to bring such action is under any legal disability to sue, the action may be commenced at any time within three years after such disability is removed.

Limitation of action for recovery of property sold.

SEC. 405. No action for the recovery of any estate, sold by a guardian, can be maintained by the ward, or by any person claiming under him, unless it is commenced within three years next after the termination of the guardianship, or when a legal disability to sue exists by reason of minority or otherwise, at the time when the cause of action accrues, within three years next after the removal thereof.

More than one guardian for same person.

SEC. 406. The court, in its discretion, whenever necessary, may appoint more than one guardian of any person subject to guardianship, who must give bond and be governed and liable in all respects as a sole guardian.

Power of judge at chambers.

SEC. 407. The power conferred upon the probate judge in relation to guardians and wards may be exercised by him at chambers, or as the act of the probate court, when holding such court; and any order appointing a guardian must be entered as, and become, a decree of the court. The provisions of this title relative to the estates of decedents, so far as they relate to the practice in the probate or district courts, applies to proceedings under this chapter.

Provisions of civil practice act applicable

SEC. 408. The provisions of the Civil Practice Act relating to the justification of sureties, are hereby declared to apply to guardians appointed by the court, and to the bonds taken or to be taken from such guardians, and to the sureties on such bonds.

CHAPTER XV.

GUARDIAN AND WARD.

Sec. 409. Guardian defined.
Sec. 410. Ward defined.
Sec. 411. Kinds of guardian.
Sec. 412. General guardian defined.
Sec. 413. Special guardian defined.
Sec. 414. When guardian appointed by will or deed.
Sec. 415. Guardian of property no power except as herein provided.
Sec. 416. Guardian of person or estate appointed in certain cases.
Sec. 417. Appointed by probate court.
Sec. 418. Exclusive jurisdiction of court.
Sec. 419. Considerations governing in the appointment.
Sec. 420. Power of guardian appointed by court.
Sec. 421. Duties of guardian.
Sec. 422. Duty of guardian of property.
Sec. 423. Relation of guardian and ward.
Sec. 424. May be controlled by court.
Sec. 425. Power of surviving guardian.
Sec. 426. Causes for removal of guardian.
Sec. 427. When power of guardian superseded.
Sec. 428. When power suspended only.
Sec. 429. Ward attaining majority may settle with guardian.
Sec. 430. When guardian entitled to release.
Sec. 431. In what cases and how an insane ward may be placed in asylum.

Guardian defined.

SEC. 409. A guardian is a person appointed to take care of the person or property of another.

Ward defined.

SEC. 410. The person over whom or over whose property a guardian is appointed is called his ward.

Guardians: kinds.

SEC. 411. Guardians are either general or special.

General guardian.

SEC. 412. A general guardian is the guardian of the person or of all the property of the ward within this territory, or both.

Special guardian.

SEC. 413. Every other is a special guardian.

Appointment by parent

SEC. 414. A guardian of the person or estate, or of both, of a child born, or likely to be born, may be appointed by will or by deed, to take effect upon the death of the parent appointing.

First. If the child be legitimate, by the father, with the written consent of the mother, or by either parent, if the other be dead or incapable of consent.

Second. If the child be illegitimate, by the mother.

No power except by appointment.

SEC. 415. No person, whether a parent or otherwise, has any power as guardian of property, except by appointment as hereinafter provided.

Appointment by court.

SEC. 416. A guardian of the person or property, or both, of a person residing in this territory, who is a minor, or of unsound mind, may be appointed in all cases other than those named in sections 351, 364, and 392, by the probate court, as provided in the Code of Civil Procedure.

Same

SEC. 417. A guardian of the property within this territory of a person not residing therein, who is a minor, or of unsound mind, may be appointed by the probate court.

Jurisdiction

SEC. 418. In all cases the court first making the appointment of a guardian has the exclusive jurisdiction to control him.

Rules for awarding custody of minor.

SEC. 419. In awarding the custody of a minor, or in appointing a general guardian, the court or officer is to be guided by the following considerations:

First. By what appears to be for the best interest of the child in respect to its temporal and its mental and moral welfare; and, if the child be of a sufficient age to form an intelligent preference the court may consider that preference in determining the question.

Second. As between parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right: but, other things being equal, if the child be of tender years, it should be given to the mother; if it be of an age to require education and preparation for labor or business, then to the father.

Third. Of two persons equally entitled to the custody in other respects, preference is to be given as follows:

1. To a parent.
2. To one who was indicated by the wishes of a deceased parent.
3. To one who already stands in the position of a trustee of a fund to be applied to the child's support.
4. To a relative.

Power of guardian

SEC. 420. A guardian appointed by a court has power over the person and property of the ward, unless otherwise ordered.

Duty of guardian of person

SEC. 421. A guardian of the person is charged with the custody of the ward, and must look to his support, health, and education. He may fix the residence of the ward at any place in this territory, but not elsewhere, without permission of the court.

Duty of guardian of estate.

SEC. 422. A guardian of the property must keep safely the property of his ward. He must not permit any unnecessary waste or destruction of the real property, nor make any sale of such property without the order of the probate court, but must, so far as it is in his power, maintain the same with its buildings and appurtenances, out of the income or other property of the estate, and deliver it to the ward at the close of his guardianship, in as good condition as he received it.

Relation confidential.

SEC. 423. The relation of guardian and ward is confidential, and is subject to trusts at common law.

Controlled by court

SEC. 424. In the management and disposition of the person or property committed to him, a guardian may be regulated and controlled by the court.

Power continues to survivor

SEC. 425. On the death of one or two or more joint guardians, the power continues to the survivor until a further appointment is made by the court.

Guardian: for what causes removed.

SEC. 426. A guardian may be removed by the probate court for any of the following causes:

First. For abuse of his trust.

Second. For continued failure to perform its duties.

Third. For incapacity to perform its duties.

Fourth. For gross immorality.

Fifth. For having an interest adverse to the faithful performance of his duties.

Sixth. For removal from the territory.

Seventh. In the case of a guardian of the property, for insolvency; or,

Eighth. When it is no longer proper that the ward should be under guardianship.

Guardian, how power is superseded

SEC. 427. The power of a guardian appointed by a parent is superseded:

First By his removal, as provided by the preceding section;

Second. By a solemnized marriage of the ward; or,

Third. By the ward's attaining majority.

Guardian how power is suspended.

SEC. 428. The power of a guardian appointed by a court is suspended only:

First. By order of the court; or,

Second. If the appointment was made solely because of the ward's minority, by his attaining majority; or,

Third. The guardianship over the ward, by the marriage of the ward.

Release by ward

SEC. 429. After a ward has come to his majority, he may settle accounts with his guardian, and give him a release, which is valid if obtained fairly and without undue influence.

Guardian's discharge

SEC. 430. A guardian appointed by the court is not entitled to his discharge until one year after the ward's majority.

Insane ward may be placed in asylum

SEC. 431. Any ward of unsound mind may be placed in an asylum for such person, upon the order of the probate judge of the county in which he resides, as follows:

First. The judge must be satisfied by the oath of two reputable physicians that such person is of unsound mind and unfit to be at large.

Second. Before granting the order the judge must examine the person himself; or, if that is impracticable, cause him to be examined by an impartial person.

Third. After the order is granted, the person alleged to be of unsound mind, his or her husband or wife, or relative to the third degree, may demand an investigation before a jury, which must be conducted in all respects as under an inquisition of lunacy.

When an infant is a party he must appear either by his general guardian, if he have one, or by a guardian appointed by the justice, as follows:

First. If the infant be plaintiff, the appointment must be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years; if under that age, upon the application of a relative or friend.

Second. If the infant be defendant, the guardian must be appointed at the time the summons is returned, or before the answer. It is the right of the infant to nominate his own guardian, if the infant be over fourteen years of age; otherwise the justice must make the appointment.

CHAPTER XVI.

EXECUTION AND REVOCATION OF WILLS.

Sec. 432. *Who may make and what may be devised by will.*
Sec. 433. *Incompetent persons.*
Sec. 434. *What wills voidable.*
Sec. 435. *Will of married woman.*
Sec. 436. *What estate may be devised.*
Sec. 437. *Who may and who may not take by will.*
Sec. 438. *Making attestation and other requisites of a will.*
Sec. 439. *Olographic will defined.*
Sec. 440. *Subscribing witnesses.*
Sec. 441. *Conjoint or mutual will.*
Sec. 442. *Subsequent incompetency of witness.*
Sec. 443. *Conditional will.*
Sec. 444. *When devise to subscribing witness void.*
Sec. 445. *When share of estate saved to subscribing witness.*
Sec. 446. *Will of non-resident made out of the territory valid if made in accordance with the lex domicilii.*
Sec. 447. *The law of the domicil at time of making will controls.*
Sec. 448. *Effect of codicil is to re-publish.*
Sec. 449. *Nuncupative will.*
Sec. 450. *Requisites of nuncupative will.*
Sec. 451. *Limitation to probate of.*
Sec. 452. *When and under what conditions it may be proved.*
Sec. 453. *When and how written will may be revoked or altered.*
Sec. 454. *Cancellation or destruction of a will; how proven.*
Sec. 455. *Revocation of will executed in duplicate.*
Sec. 456. *How prior will affected by a subsequent one.*
Sec. 457. *Effect of destruction of subsequent will.*

Sec. 458. Effect of after marriage or issue after execution of will.
Sec. 459. Effect of survival of wife of marriage after execution of will.
Sec. 460. Will of unmarried woman revoked by marriage.
Sec. 461. Effect of agreement of testator to transfer property already devised.
Sec. 462. Effect of charge or incumbrance on property devised.
Sec. 463. Effect upon will of a conveyance or other act.
Sec. 464. Requisites of instrument amounting to a revocation.
Sec. 465. Revocation of will revokes codicils.
Sec. 466. Share of child born after making of will.
Sec. 467. Share of child omitted in will.
Sec. 468. Effect of assigning its share to a child born after or omitted in the will.
Sec. 469. Of advancement to a child.
Sec. 470. Lineal descendants take the share given to devisee.
Sec. 471. Devise conveys all the estate of devisor in the thing devised.
Sec. 472. After-acquired property passes by the will.
Sec. 473. Restrictions to devises to benevolent and charitable institutions.

Who competent to make will.

SEC. 432. Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his estate, real and personal, and such estate not disposed of by will is subject to succession, as provided for by Chapter XIX of this act, as the estate of an intestate, being chargeable in both cases with the payment of all the decedent's debts, as provided in this act.

Who incompetent.

SEC. 433. A person having an insane delusion is incompetent to make a will.

Will or revocation procured by fraud

SEC. 434. A will or part of a will procured to be made by duress, menace, fraud, or undue influence, may be denied probate; and a revocation, procured by the same means, may be declared void.

Will by married woman.

SEC. 435. A married woman may make a will in the same manner and with same effect as if she were sole, except that such will shall not without the written consent of her husband, operate to deprive him of more than one-third of her real estate or of more than one-third of her personal estate.

NOTE.—Section 435 is from Act of March 7, 1887.

SEC. 436. Every estate and interest in real or personal property to which heirs, husband, widow, or next of kin might succeed, may be disposed of by will except as otherwise provided in sections 133 to 140, both inclusive.

What may pass by will

SEC. 437. A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except corporations other than those formed for scientific, literary, or solely educational purposes, cannot take under a will, unless expressly authorized by statute.

Who may take by will.

SEC. 438. Every will, other than a nuncupative will, must be in writing; and every will, other than an olographic will and a nuncupative will, must be executed and attested, as follows:

Written will: how to be executed

First. It must be subscribed at the end thereof by the testator himself, or some person in his presence, and, by his direction, must subscribe his name thereto;

Second. The subscription must be made in the presence of each of the attesting witnesses, or be acknowledged by the testator to them to have been made by him or by his authority;

Third. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will; and,

Fourth. There must be two attesting witnesses, each of whom must sign his name as a witness at the end of the will, at the testator's request and in his presence.

SEC. 439. An olographic will is one that is entirely written, dated and signed by the hand of the testator himself; it is subject to no other form, and may be made in or out of this territory, and need not be witnessed.

Olographic will.

SEC. 440. A witness to a written will must write, with his name, his place of residence; and a person who subscribes the testator's name by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will.

Witness to add residence

SEC. 441. A conjoint or mutual will is valid; but it may be revoked by any of the testators, in like manner with any other will.

Mutual will.

SEC. 442. If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompetency, from whatever cause it may arise, does not prevent the probate and allowance of the will, if it is otherwise satisfactorily provided.

Competency of subscribing witnesses

Conditional will.

SEC. 443. A will, the validity of which is made by its own terms conditional, may be denied probate, according to the event, with reference to the conditions.

Gifts to subscribing witnesses void.

SEC. 444. All beneficial devises, legacies and gifts whatever, made or given in any will to a subscribing witness thereto, are void, unless there are two other competent subscribing witnesses to the same; but a mere charge on the estate of a testator for the payment of debts does not prevent his creditors from being competent witnesses of his will.

Witness otherwise entitled to share in estate.

SEC. 445. If a witness to whom any beneficial devise, legacy or gift, void by the preceding section, is made, would have been entitled to any share of the estate of the testator, in case the will should not be established, he succeeds to so much of the share as would be distributed to him, not exceeding the devise or bequest made to him in the will; and he may recover the same of the other devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them.

Will made out of territory.

SEC. 446. A will of real or personal property, or both, or a revocation thereof made out of this territory by a person not having his domicil in this territory, is as valid when executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, as if it were made in this territory, and according to the provisions of this chapter.

Subsequent change of domicile.

SEC. 447. Whenever a will or a revocation thereof is duly executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, the same is regulated, as to the validity of its execution, by the law of such place, notwithstanding the testator subsequently changed his domicile to a place by the law of which such will would be void.

Codicil.

SEC. 448. The execution of a codicil referring to a previous will has the effect to republish the will, as modified by the codicil.

Nuncupative will.

SEC. 449. A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities.

Requisites of nuncupative will

SEC. 450. To make a nuncupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed:

First. The estate bequeathed must not exceed in value the sum of one thousand dollars.

Second. It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator at the time, to bear witness that such was his will, or to that effect.

Third. The decedent must, at the time, have been in actual military service in the field, or doing duty on shipboard at sea, and, in either case, in actual contemplation, fear or peril of death; or the decedent must have been at the time in expectation of immediate death from an injury received the same day.

Time for proving nuncupative will.

SEC. 451. No proof must be received of any nuncupative will unless it is offered within six months after speaking the testamentary words, nor unless the words or the substance thereof were reduced to writing within thirty days after they were spoken.

Probate of nuncupative will.

SEC. 452. No probate of any nuncupative will must be granted for fourteen days after the death of the testator; nor must any nuncupative will be at any time proved unless the testamentary words or the substance thereof be first committed to writing, and process issued to call in the widow or other persons interested, to contest the probate of such will, if they think proper.

Revocation or alteration of written will.

SEC. 453. Except in cases in this chapter mentioned no written will nor any part thereof can be revoked or altered otherwise than:

First. By a written will or other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which a will should be executed by such testator; or,

Second. By being burnt, torn, cancelled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by some person in his presence, and by his direction.

Evidence of concellation, etc of will.

SEC. 454. When a will is cancelled or destroyed by any other person than the testator, the direction of the testator, and the fact of such injury or destruction, must be proved by two witnesses.

Revocation of duplicate.

SEC. 455. The revocation of a will executed in duplicate may be made by revoking one of the duplicates.

Revocation by subsequent will.

SEC. 456. A prior will is not revoked by a subsequent will, unless the latter contains an express revocation or provision wholly inconsistent with the terms of the former will; but in other cases the prior will remains effectual so far as consistent with the provisions of the subsequent will.

Prior will not revived by revocation of subsequent will.

SEC. 457. If, after making a will, the testator duly makes and executes a second will, the destruction, cancellation or revocation of such second will does not revive the first will, unless it appears by the terms of such revocation that it was the intention to revive and give effect to the first will, or, unless, after such destruction, cancellation or revocation, the first will is duly re-published.

Revocation by marriage and birth of issue.

SEC. 458. If, after having made a will, the testator marries and has issue of such marriage, born either in his lifetime or after his death, and the wife or issue survives him, the will is revoked, unless provisions have been made for such issue by some settlement, or, unless such issue is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received.

Revocation by marriage.

SEC. 459. If, after making a will, the testator marries and the wife survives the testator, the will is revoked, unless provision has been made for her by marriage contract, or unless she is provided in the will, or in such way mentioned therein, as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation must be received.

Revocation of woman's will by marriage.

SEC. 460. A will executed by an unmarried woman is revoked by her subsequent marriage, and is not revived by the death of her husband.

Agreement for sale not a revocation.

SEC. 461. An agreement made by a testator for the sale or transfer of property disposed of by a will, previously made, does not revoke such disposal, but the property passes by the will, subject to the same remedies on the testator's agreement for a specific performance, or otherwise, against the devisees or legatees, as might be had against the testator's successors, if the same had passed by succession.

Lien not a revocation.

SEC. 462. A charge of incumbrance upon any estate for the purpose of securing payment of money, or the performance of any covenant or agreement, is not a revocation of any will relating to the same estate which was previously executed; but the devise and legacies therein contained must pass, subject to such charge or incumbrance.

Conveyance etc. not a revocation.

SEC. 463. A conveyance, settlement, or other act of a testator by which his interest in a thing previously disposed of by his will is altered, but not wholly divested, is not a revocation; but the will passes the property which would otherwise devolve by succession.

When conveyance etc is revocation

SEC. 464. If the instrument by which an alteration is made of the testator's interest in a thing previously disposed of by his will, expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless such inconsistent provisions depend on a condition or contingency by reason of which they do not take effect.

Revocation of codicils

SEC. 465. The revocation of a will revokes all its codicils.

Rights of afterborn child

SEC. 466. Whenever a testator has a child born after the making of his will, either in his lifetime or after his death, and dies leaving such child unprovided for by any settlement, and neither provided for, nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property that he would have succeeded to if the testator had died intestate.

Failure to provide for children

SEC. 467. When a testator omits to provide in his will for any of his children, or for the issue of any deceased child, unless it appears that such omission was intentional, such child, or the issue of such child, must have the same share in the estate of the testator as if he had died intestate, and succeeds thereto as provided in the preceding section.

Share of after born child, how taken out of estate.

SEC. 468. When any share of the estate of a testator is assigned to a child born after the making of a will, or to a child or to the issue of a child omitted in the will, as hereinbefore mentioned, the same must first be taken from the estate not disposed of by the will, if any; if that is not sufficient, so much as may be necessary must be taken from all the devisees or legatees in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific devise or bequest, or other provision in the will would thereby be defeated; in such case such specific devise, legacy, or provision may be exempted from such apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted.

Advancement during life of testator.

SEC. 469. If such children, or their descendants so unprovided for had an equal proportion of the testator's estate bestowed on them in the testator's lifetime by way of advancement, they take nothing in virtue of the provisions of the three preceding sections.

Heirs of devisee inherit.

SEC. 470. When any estate is devised to any child or other relation of the testator, and the devisee dies before the testator, leaving lineal descendants, such descendants take the estate so given by the will, in the same manner as the devisee would have done had he survived the testator.

Devise of land.

SEC. 471. Every devise of land in any will conveys all the estate of the devisor therein, which he could lawfully devise, unless it clearly appears by the will that he intended to convey a less estate.

After acqured estate passes by will

SEC. 472. Any estate, right or interest in lands acquired by the testator after making of his will, passes thereby, and in like manner as if title thereto was vested in him at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator. Every will made in express terms devising, or in any other terms denoting the intent of the testator to devise all the real estate of such testator, passes all the real estate which such testator was entitled to devise at the time of his decease.

Devise or bequest to charitable or benevolent society.

SEC. 473. No estate, real or personal, shall be bequeathed or devised to any charitable or benevolent society or corporation, or to any person or persons in trust for charitable uses, except the same be done by will, duly executed at least thirty days before the decease of the testator; and if so made, at least thirty days prior to such death, such devise or legacy, and each of them, shall be valid: *Provided*, That no such devises or bequest shall collectively exceed one-third of the estate of the testator, leaving legal heirs, and in such case a *pro rata* deduction from such devises or bequests shall be made so as to reduce the aggregate thereof to one-third of such estate; and all dispositions of property made contrary hereto shall be void, and go to the residuary legatee or devisee, next of kin, or heirs, according to law.

CHAPTER XVII.

INTERPRETATION OF WILLS AND EFFECT OF VARIOUS PROVISIONS.

Sec. 474. Construction of will.
Sec. 475. In cases of uncertainty, how construed.
Sec. 476. Rules of this chapter to be observed.
Sec. 477. Several testamentary instruments construed as one.
Sec. 478. Parts construed in relation to each other.

Sec. 479. A clear and distinct devise cannot be affected.
Sec. 480. Ambiguous part explained by the rest.
Sec. 481. Ordinary and grammatical sense.
Sec. 482. Words of a will construed so as to give them effect rather than otherwise.
Sec. 483. Of two modes of interpreting.
Sec. 484. How technical words taken.
Sec. 485. Technical words unnecessary.
Sec. 486. Term "heirs" unnecessary.
Sec. 487. Will purporting to devise all property.
Sec. 488. Passes all property at time of testator's death.
Sec. 489. Residue includes all property not otherwise devised.
Sec. 490. Residue of personal property.
Sec. 491. What passes by words of donation and not of limitation.
Sec. 492. When terms in last section used as words of donation.
Sec. 493. Words referring to death or survivorship.
Sec. 494. What included in a testamentary disposition to a class.
Sec. 495. When real estate treated as personal property.
Sec. 496. Posthumous child takes as one of a class.
Sec. 497. Corrections of errors or omissions.
Sec. 498. Of devises and bequests on attaining majority.
Sec. 499. When vested testamentary disposition is divested.
Sec. 500. Testamentary disposition fails on death of devisee except.
Sec. 501. Devisee's or legatee's death does not defeat, etc.
Sec. 502. Conditional disposition defined.
Sec. 503. Condition precedent defined.
Sec. 504. What vests when a testamentary disposition is made on condition precedent.
Sec. 505. When a condition precedent is deemed performed.
Sec. 506. Condition subsequent defined.
Sec. 507. Devise or legacy to owners in common.
Sec. 508. Advancements or gifts as redemptions.

SEC. 474. A will is to be construed according to the intention of the testator. When his intention can not have effect to its full extent, it must have effect as far as possible.

Testator's intention to have effect.

Intention, how ascertained.

SEC. 475. In case of uncertainty arising upon the face of a will as to the application of any of its provisions, the testator's intention is to be ascertained from the words of the will, taking into view the circumstances under which it was made, exclusive of his oral declarations.

Rules of interpretation.

SEC. 476. In interpreting a will, subject to the law of this territory, the rules prescribed by the following sections of this chapter are to be observed, unless an intention to the contrary clearly appears.

Several instruments to be taken together

SEC. 477. Several testamentary instruments, executed by the same testator, are to be taken and construed together as one instrument.

All parts to be construed in relation to each other.

SEC. 478. All the parts of a will are to be construed in relation to each other, and so as, if possible, to form one consistent whole; but where several parts are absolutely irreconcilable the latter must prevail.

Devise etc. in what cases not affected.

SEC. 479. A clear and distinct devise or bequest cannot be affected by any reasons assigned therefor, or by any other words not equally clear and distinct, or by inference or argument from other parts of the will, or by an inaccurate recital of, or reference to, its contents in another part of the will.

Doubtful provisions.

SEC. 480. Where the meaning of any part of a will is ambiguous or doubtful, it may be explained by any reference thereto, or recital thereof, in another part of the will.

Words taken in ordinary sense.

SEC. 481. The words of a will are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be collected, and that other can be ascertained.

Every expression to have effect.

SEC. 482. The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which will render any of the expressions inoperative.

Intestacy to be avoided

SEC. 483. Of two modes of interpreting a will, that is to be preferred which will prevent a total intestacy.

Technical words

SEC. 484. Technical words in a will are to be taken in their technical sense, unless the context clearly indicates a contrary intention.

Same

Sec. 485. Technical words are not necessary to give effect to any species of disposition by a will.

Terms not necessary to pass a fee.

SEC. 486. The term "heirs," or other words of inheritance, are not requisite to devise a fee, and a devise of real property passes all the estate of the testator, unless otherwise limited.

SEC. 487. Real or personal property embraced in a power to devise, passes by a will purporting to devise all the real or personal property of the testator.

Power to devise.

SEC. 488. A devise or bequest of all the testator's real or personal property, in express terms or in any other terms denoting his intent to dispose of all his real or personal property, passes all the real or personal property which he was entitled to dispose of by will at the time of his death.

Devise or bequest of all property

SEC. 489. A devise of residue of the testator's real property passes all the real property which he was entitled to devise at the time of his death, not otherwise effectually devised by his will.

Residue of real property.

SEC. 490. A bequest of the residue of the testator's personal property passes all the personal property which he was entitled to bequeath at the time of his death, not otherwise effectually bequeathed by his will.

Bequest of personal property

SEC. 491. A testamentary disposition to "heirs," relatives, nearest relations, "representatives," legal representatives, or personal representatives, or family, issue, descendants, nearest or next of kin, of any person without other words of qualification, and when the terms are used as words of donation and not of limitation, vests the property in those who would be entitled to succeed to the property of such persons according to the provisions of the title on successions in this code.

In whom property is vested by use of certain words

SEC. 492. The terms mentioned in the last section are used as words of donation and not of limitation, when the property is given to the person so designated, directly, and not as a qualification of an estate given to the ancestor of such person.

Same

SEC. 493. Words in a will referring to death or survivorship simply relate to the time of the testator's death, unless possession is actually postponed, when they must be referred to the time of possession.

Words in will referring to death, etc

SEC. 494. A testamentary disposition to a class includes every person answering the description at the testator's death; but when the possession is postponed to a future period it includes also all persons coming within the description before the time to which possession is postponed.

Disposition to a class

SEC. 495. When a will directs the conversion of real property into money, such property and all its proceeds must be deemed personal property from the time of the testator's death.

When real considered personal property

SEC. 496. A child conceived before but not born until after a testator's death or any other period when a disposition to a class vests in right or possession, takes, if answering to the description of the class.

Rights of after-born child

Mistakes and omissions.

SEC. 497. When applying a will it is found that there is an imperfect description, or that no person or property exactly answers the description, mistakes and omissions must be corrected, if the error appears from the context of the will, or from extrinsic evidence; but evidence of the declarations of a testator as to his intentions cannot be received.

When devises etc vests

SEC. 498. Testamentary dispositions, including devises and bequests to a person on attaining majority, are presumed to vest at the testator's death.

How divested.

SEC 499. A testamentary disposition when vested, cannot be divested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose.

Death of devisee or legatee.

SEC. 500. If a devisee or legatee dies during the lifetime of the testator, the testamentary disposition to him fails, unless an intention appears to substitute some other in his place, except as provided in section 501.

Same

SEC. 501. The death of a devisee or legatee of a limited interest, before the testator's death, does not defeat the interests of persons in remainder, who survive the testator.

Conditional disposition

SEC. 502. A conditional disposition is one which depends upon the occurrence of some uncertain event by which it is either to take effect or be defeated.

Condition precedent.

SEC. 503. A condition precedent in a will is one which is required to be fulfilled before a particular disposition takes effect.

When conditional disposition vests.

SEC. 504. When a testamentary disposition is made upon a condition precedent, nothing vests until the condition is fulfilled, except when such fulfillment is impossible, in which case the disposition vests, unless the condition was the sole motive thereof, and the impossibility was unknown to the testator, or arose from an unavoidable event subsequent to the execution of the will.

Performance of condition precedent.

SEC. 505. A condition precedent in a will is to be deemed performed when the testator's intention has been substantially, though not literally, complied with

Condition subsequent.

SEC. 506. A condition subsequent is when an estate or interest is so given as to vest immediately, subject only to be divested by some subsequent act or event.

Joint devise etc.

SEC. 507. A devise or legacy given to more than one person vests in them as owners in common.

Advancements.

SEC. 508. Advancements or gifts are not to be taken as redemptions of general legacies, unless such intention is expressed by the testator, in writing.

CHAPTER XVIII.

GENERAL PROVISIONS.

Sec. 509. Distinguishment and designation of legacies.
Sec. 510. All property charged with payment of debts except.
Sec. 511. The order in which property resorted to for paying debts.
Sec. 512. The order in which property resorted to for paying legacies.
Sec. 513. Legacies to relations chargeable after legacies to others.
Sec. 514. Abatement between legacies.
Sec. 515. Of specified devise or legacy.
Sec. 516. When right of purchaser or incumbrancer is and is not impaired by devise.
Sec. 517. Specific legacies for life only.
Sec. 518. When bequest of income accrues.
Sec. 519. Legacy or gift in contemplation of death.
Sec. 520. Legacies and annuities; when due and to commence.
Sec. 521. Legacies bear interest.
Sec. 522. Four preceding sections controlled by testator's intention.
Sec. 523. When person not named as executor is entitled to letters.
Sec. 524. Authority to an executor to appoint an executor is void.
Sec. 525. Powers of executor before qualifying.
Sec. 526. When provisions of this title to take effect.
Sec. 527. Not to affect validity or construction of wills made prior.
Sec. 528. Law of this territory to govern.
Sec. 529. Laws governing as to real and personal property.
Sec. 530. Liability of persons taking under the will.

Legacies.

SEC. 509. Legacies are distinguished and designated according to their nature, as follows:

Specific

First. A legacy of a specific thing, specified and distinguished from all others of the same kind belonging to the testator, is specific; if such legacy fails, resort cannot be had to the other property of the testator.

Demonstrative. *Second.* A legacy is demonstrative when the particular fund of personal property is pointed out from which it is to be taken or paid; if such fund or property fails, in whole or in part, resort may be had to the general assets, as in case of a general legacy.

Annuity. *Third.* An annuity is a bequest of certain specific sums periodically; if the fund or property out of which they are payable fails, resort may be had to the general assets, as in a case of general legacy.

Residuary. *Fourth.* A residuary legacy embraces only that which remains after all the bequests of the will are discharged.

General. *Fifth.* All other legacies are general legacies.

Debts to be paid. SEC. 510. When a person dies intestate, all his property, real and personal, without any distinction between them, is chargeable with the payment of his debts, except as otherwise provided in this code and the code of civil procedure.

To what property resort shall be had for payment of debts. SEC. 511. The property of a testator, except as otherwise specially provided for in this code and the code of civil procedure, must be resorted to for the payment of debts in the following order:

First. The property which is expressly appropriated by the will for the payment of the debts;

Second. Property not disposed of by the will;

Third. Property which is devised or bequeathed to a residuary legatee;

Fourth. Property which is not specifically devised or bequeathed; and

Fifth. All other property ratably.

Before any debts are paid the expenses of the administration and the allowance to the family must be paid or provided for.

Payment of legacies. SEC. 512. The property of a testator, except as otherwise specially provided in this code and the code of civil procedure, must be resorted to for the payment of legacies, in the following order:

First. The property which is expressly appropriated by the will for the payment of the legacies.

Second. Property not disposed of by the will.

Third. Property which is devised or bequeathed to a residuary legatee.

Fourth. Property which is not specifically devised or bequeathed.

Same. SEC. 513. Legacies to husband, widow, or kindred of any class, are chargeable only after legacies to persons not related to the testator.

Abatement.

SEC. 514. Abatement takes place in any class only as between legacies of that class, unless a different intention is expressed in the will.

Possession of specified devise, etc.

SEC. 515. In a specified devise or legacy, the title passes by the will; but possession can only be obtained from the personal representative, and he may be authorized by the judge of the probate court to sell the property devised and bequeathed in the cases herein provided.

Rights of purchaser

SEC. 516. The rights of a purchaser or incumbrancer of real property, in good faith, and for value, derived from any person claiming the same by succession, are not impaired by any devise made by the decedent from whom succession is claimed, unless the instrument containing such devise is duly proved as a will, and recorded in the office of the clerk of the probate court having jurisdiction thereof, or unless written notice of such devise is filed with the clerk of the county where the real property is situated, within four years after the devisor's death.

Specific legacies for life

SEC. 517. Where specific legacies are for life only, the first legatee must sign and deliver to the second legatee, or, if there is none, to the personal representative, an inventory of the property, expressing that the same is in his custody for life only, and that on his decease it is to be delivered and to remain to the use and for the benefit of the second legatee, or to the personal representative, as the case may be.

When income accrues.

SEC. 518. In case of a bequest of the interest or income of a certain sum or fund, the income accrues from the testator's death.

Satisfaction.

SEC. 519. A legacy or a gift in contemplation, fear, or peril of death, may be satisfied before death.

Legacies; when due.

SEC. 520. Legacies are due and deliverable at the expiration of one year after the testator's death; annuities commence at the testator's decease.

Interest.

SEC. 521. Legacies bear interest from the time when they are due and payable, except that legacies for maintenance, or to the testator's widow, bear interest from the testator's decease.

Testator's intention.

SEC. 522. The four preceding sections are in all cases to be controlled by the testator's express intention.

Executor may serve though not named.

SEC. 523. When it appears by the terms of a will that it was the intention of the testator to commit the execution thereof, and the administration of his estate to any person as executor, such person, although not named executor, is entitled to letters testamentary, in like manner as if he had been named executor.

Void authority.

SEC. 524. An authority to an executor to appoint an executor is void.

No power before qualification

SEC. 525. No person has any power as an executor, until he qualifies, except that before letters have been issued he may pay funeral charges and take necessary measures for the preservation of the estate.

Provisions as to revocation

SEC. 526. The provisions of this title in relation to the revocation of wills apply to all wills made by any testator living at the expiration of one year from the time it takes effect.

Validity of prior wills.

SEC. 527. The provisions of this title do not impair the validity of the execution of any will made before it takes effect, or effect the construction of any such will.

Lex fori.

SEC. 528. The validity and interpretation of wills, wherever made, are governed, when relating to property within this territory, by the law of this territory.

What law is applicable.

SEC. 529. Except as otherwise provided, the validity and interpretation of wills are governed, when relating to real property within this territory, by the law of this territory; when relating to personal property, by the law of the testator's domicile.

Liability of beneficiaries.

SEC. 530. Those to whom property is given by will are liable for the obligations of the testator in the cases and to the extent prescribed by the code of civil procedure.

CHAPTER XIX.

SUCCESSIONS.

Sec. 531. Succession defined.
Sec. 532. Property of intestate passes to heirs.
Sec. 533. Personal representative defined.
Sec. 534. Distribution of and order of succession to property of intestate.
Sec. 535. Of escheats to the territory.
Sec. 536. When an illegitimate child is an heir.
Sec. 537. Succession to property of illegitimate child.
Sec. 538. Degree of kindred defined.
Sec. 539. Lineal and collateral consanguinity.
Sec. 540. Direct line, ascending and descending.
Sec. 541. Degrees in direct line.
Sec. 542. Collateral line; how reckoned.
Sec. 543. Inheritance of kindred of the half blood
Sec. 544. Advancements are part of the estate.
Sec. 545. When advancement exceeds share; heir not to refund.
Sec. 546. What are advancements.

Sec. 547. Value of advancement; how estimated.
Sec. 548. Advancements to be considered when heir dies before decedent and leaves children.
Sec. 549. Application of preceding sections to husband and wife.
Sec. 550. Who succeeds on death of wife.
Sec. 551. Succession and distribution on death of husband.
Sec. 552. Inheritance or succession by right of representation.
Sec. 553. Right of succession of aliens.
Sec. 554. Proceedings if property not claimed under last section.
Sec. 555. Proceedings when so claimed.
Sec. 556. Real property escheating subject to same charges as other property.
Sec. 557. Obligations of successors to decedent.
Sec. 558. Repealing clause.
Sec. 559. When act to take effect.

Succession defined

SEC. 531. Succession is the coming in of another to take the property of one who dies without disposing of it by will.

Property entestate.

SEC. 532. The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the probate court, and to the possession of any administrator appointed by that court for the purposes of administration.

Personal representative defined.

SEC. 533. The personal representative of the decedent within the meaning of that phrase as used in the preceding section, is the duly qualified and acting executor, administrator, or administrator with the will annexed, of the estate of the decedent.

Succession to and distribution of property.

SEC. 534. When any person having title to any estate not otherwise limited by marriage contract, dies without disposing of the estate by will, it is succeeded to and must be distributed, unless otherwise expressly provided in this code and the code of civil procedure, subject to the payment of his debts, in the following manner.

First. If the decedent leave a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leave a surviving husband or wife and more than one child living, or one child living, and the lawful issue of one or more deceased children, one-third to the husband or wife, and the remainder in equal shares to his children, and to the lawful issue of any deceased child, by right of his representation; but if there be no child of the decedent living at his death, the remainder goes to all his lineal descendants; and if all of the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leave no surviving husband or wife, but leave issue, the whole estate goes to such issue; and if such issue consists of more than one child living, or one child living, and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the child living, and to the issue of the deceased child or children by right of representation.

Second. If the decedent leave no issue, then the estate goes in equal shares to the surviving husband or wife, and to the decedent's father. If there be no father, then one-half goes in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation. If he leave a mother also, she takes an equal share with the brothers and sisters. If the decedent leave no issue, nor husband nor wife, the estate must go to the father.

Third. If there be no issue, nor husband, nor wife, nor father, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation. If a mother survive, she takes an equal share with the brothers and sisters.

Fourth. If the decedent leave no issue, nor husband, nor wife, nor father, and no brother nor sister is living at the time of his death, the estate goes to his mother, to the exclusion of the issue, if any, of deceased brothers or sisters.

Fifth. If the decedent leave a surviving husband or wife, and no issue, and no father, nor mother, nor brother, nor sister, the whole goes to the surviving husband or wife.

Sixth. If the decedent have no issue, nor husband, nor wife, and no father, nor mother, nor brother nor sister, the estate must go to the next of kin, in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claimed through the nearest ancestors must be preferred to those claiming through an ancestor more remote, however, *Seventh.* If the decedent leave several children, or one child and the issue of one or more children, and any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation.

Eighth. If, at the death of such child who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parent, descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation.

Escheat.

SEC. 535. If the decedent leave no husband, wife or kindred, the estate escheats to the territory.

Inheritance by illegitimate child

SEC. 536. Every illegitimate child is an heir of the person who, in writing signed in the presence of a competent witness, acknowledges himself to be the father of such child; and in all cases is an heir of his mother, and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if it had been born in lawful wedlock; but he does not represent his father or mother by inheriting any part of the estate of his or her kindred, either lineal or collateral, unless, before his death, his parents shall have intermarried, and his father, after such marriage, acknowledges him as his child, or adopts him into his family, in which case such child and all the illegitimate children are considered brothers and sisters, and on the death of either of them, intestate and without issue, the others inherit his estate, and an heir, as hereinbefore provided, in like manner as if all the children had been legitimate; saving to the father and mother respectively, their rights in the estates of all the children in like manner as if all had been legitimate. The issue of all marriages will, in law, or dissolved by divorce, are legitimate.

Estate of illegitimate child goes to mother.

SEC. 537. If an illegitimate child who has not been acknowledged or adopted by his father, dies intestate without lawful issue, his estate goes to his mother, or, in case of her decease, to her heirs at law.

Degrees of kindred; how established.

SEC 538. The degree of kindred is established by the number of generations, and each generation is called a degree.

Same.

SEC. 539. The series of degrees forms the line; the series of degrees between persons who descend from one another, is called direct or lineal consanguinity; and the series of degrees between persons who do not descend from one another, but spring from a common ancestor, is called the collateral line, or collateral consanguinity.

Same.

SEC. 540. The direct line is divided into a direct line descending, and a direct line ascending. The first is that which connects the ancestor with those who descend from him; the second is that which connects a person with those from whom he descends.

Same.

SEC. 541. In the direct line there are as many degrees as there are generations. Thus, the son is with regard to the father in the first degree; the grandson in the second, and *vice versa* with regard to the father and grandfather, towards the sons and grandsons.

Same.

SEC. 542. In the collateral line the degrees are counted by generations, from one of the relations up to the common ancestor, and from the common ancestor to the other relations. On such computation the decedent is excluded, the relation included, and the ancestor counted but once. Thus, brothers are related in the second degree; uncle and nephew in the third degree; cousins-german in the fourth, and so on.

Kindred of half blood

SEC. 543. Kindred of the half blood inherit equally with those of the whole blood in the same degree, unless the inheritance came to the intestate by descent, devise, or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestor must be excluded from such inheritance.

Advancements

SEC. 544. Any estate, real or personal, given by the decedent in his lifetime as an advancement to any child or other lineal descendant, is a part of the estate of the decedent for the purposes of division and distribution thereof among his issue, and must be taken by such child or other lineal descendant towards his share of the estate of the decedent.

Same

SEC. 545. If the amount of such advancements exceeds the share of the heir receiving the same, he must be excluded from receiving any further portion in the division and distribution of the estate, but he must not be required to refund any part of such advancement; and if the amount so received is less than his share, he is entitled to so much more as will give him his full share of the estate of the decedent.

SEC. 546. All gifts and grants are made as advancements, if expressed in the gift or grant to be made, or if charged in writing by the decedent as an advancement, or acknowledged in writing as such by the child, or other successor or heir. Same

SEC. 547. If the value of the estate so advanced is expressed in the conveyance, or in the charge thereof, made by the decedent, or in the acknowledgement of the party receiving it, it must be held as of that value, in the division and distribution of the estate, otherwise it must be estimated according to its value when given, as nearly as the same can be ascertained. Same.

SEC. 548. If any child or other lineal descendant, receiving an advancement, dies before the decedent, leaving issue, the advancement must be taken into consideration in the division and distribution of the estate, and the amount thereof must be allowed accordingly by the representatives of the heirs receiving the advancement, in like manner as if the advancements had been made directly to them. Same.

SEC. 549. The provisions of the preceding section of this title as to the inheritance of the husband and wife from each other, apply only to the separate property of the decedent. Same.

SEC. 550. Upon the death of the wife the entire community property, without administration, belongs to the surviving husband, except such portion thereof as may have been set apart to her by judicial decree for her support and maintenance, which portion is subject to her testamentary disposition; and in the absence of such disposition goes to her descendants or heirs, exclusive of her husband. When wife dies community property goes to husband

SEC. 551. Upon the death of the husband, one-half of the community property goes to the surviving wife, and the other half is subject to the testamentary disposition of the husband; and in the absence of such disposition goes to his descendants, equally, if such descendants are in the same degree of kindred to the decedent, otherwise, according to the right of representation; and in the absence of both such disposition and such descendants, is subject to distribution in the same manner as the separate property of the husband. In case of the dissolution of the community by the death of the husband, the entire community property is equally subject to his debts, the family allowance, and the charges and expenses of administration. Disposition of community property upon husband's death

Representation.

SEC. 552. Inheritance or succession "by right of representation" takes place when the descendants of any deceased take the same show, or right, in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents.

Aliens.

SEC. 553. Resident aliens may take in all cases by succession as citizens; and no person capable of succeeding under the provisions of this title is precluded from such succession by reason of the alienage of any relative; but no non-resident foreigner can take by succession, unless he appears and claims such succession within five years after the death of the decedent to whom he claims succession.

Deposit with territorial treasury.

SEC. 554. When succession is not claimed as provided in the preceding section, the district court, on information, must direct the district attorney of the district in which the property is situated to reduce the property to his or the possession of the territory, or to cause the same to be sold, and the same or the proceeds thereof to be deposited in the territorial treasury for the benefit of such non-resident foreigner or his legal representatives, to be paid to him whenever, within five years after such deposit, proof to the satisfaction of the territorial auditor and treasurer is produced that he is entitled to succeed thereto.

Payment to claimant.

SEC. 555. When so claimed, the evidence and the joint order of the auditor and treasurer must be filed by the treasurer as his voucher, and the property delivered, or the proceeds paid to the claimant on filing his receipt therefor. If no one succeeds to the estate or proceeds, as herein provided, the property of the decedent devolves and escheats to the people of the territory, and is placed by the territorial treasurer to the credit of the general fund.

Charges and trusts.

SEC. 556. Real property passing to the territory under the last section, whether held by the estate or its officers, is subject to the same charges and trusts to which it would have been subject if it had passed by succession.

Liability of successors.

SEC. 557. Those who succeed to the property of a decedent are liable for his obligations, in the cases and to the extent prescribed by the laws of this territory.

NOTE.—The foregoing 557 sections, except where otherwise noted, are taken from the Act of February 16, 1877. Sections 396 and 397 are from "An act to amend sections 396 and 397 of the Second Division of the Revised Statutes of Montana," approved March 5, 1887.

CHAPTER XX.

OF SETTLEMENT OF SMALL ESTATES.

12th ses p. 45

Settlement of estate under $500 in value

SEC. 558. If it shall appear at the time of filing the inventory and appraisement that the estate of a deceased person does not exceed five hundred dollars, the probate judge shall thereupon make an order that the administrator may make final settlement of such estate at the end of six months from the date of such order. Notice of the making of such order, and of the time and place of such settlement, shall be forthwith made and published in the same manner, and for the same length of time, as now required for notice of final settlement. Such notice shall also state that letters testamentary or of administration have been granted, giving the date thereof, and that all persons having claims against the said estate are required to exhibit them for allowance on or before the day named therein for final settlement, and that if such claims be not thus exhibited, they will be forever barred.

Administration of small estates.

SEC. 559. The administration of such estates shall in other respects be conducted in the same manner as now provided by law, except that if any part of such estate is real property, it shall be sold at the same time and in the same manner as the personal property.

Final account

SEC. 560. At the time mentioned in said notice, or such further time as may be granted by the court, the administrator shall make final settlement of such estates. If creditors who have proved their claims are not present in court to receive their money at the the time of making such settlement, the administrator shall pay the same over to the probate judge, taking his receipt therefor, and thereafter the probate judge shall pay over such sum or sums to the proper claimant or claimants, upon demand.

Time may be extended

SEC. 561. For good cause shown, the probate judge may extend the time for making such final settlement, but in no case shall it be extended beyond one year from the date of issuance of lettes of administration in such estates.

NOTE.—Chapter XX. is from Act of February 9, 1881

CHAPTER XXI.

MINOR HEIRS, COSTS.

Minor may prosecute suit without prepayment of costs.

SEC. 562. That any minor heir or heirs, either resident or non-resident of this territory, may commence and prosecute any suit or suits against any executor or administrator, and sureties upon the bond of

—26

such executor or administrator, by attorney or *next friend*, and without the pre-payment of costs, or security therefor; but such minor shall not be relieved from liability to pay such costs, and the same shall be a lien upon any judgment on property he may recover in such action, and it is hereby made the duty of the officers of the courts to issue all writs and serve the same without demanding or receiving their fees in advance.

Affidavit in such case

SEC. 563. That to entitle any such minor heir so to sue, it shall appear by the affidavit of his or her attorney or *next friend*, that such heir has a good cause of action and is unable to pay the costs in money or to procure security therefor.

NOTE —Act February 11, 1876.

THIRD DIVISION.

Criminal Practice Act.

CHAPTER I.

ELEMENTARY PRINCIPLES.

Sec. 1. Criminal action defined.
Sec. 2. Criminal actions prosecuted in name of the territory; accused known as defendant.
Sec. 3. Crimes classified.
Sec. 4. Distinction between misdemeanors and felonies.
Sec. 5. Prosecutions—how conducted before justice of the peace, and in probate and district court.
Sec. 6. Criminal jurisdiction of justice of the peace, probate court, and district court defined.
Sec. 7. Where cause shall be tried in case of concurrent jurisdiction.
Sec. 8. How person convicted of felony.
Sec. 9. Rights of defendant in criminal action.
Sec. 10. Person once duly convicted or acquitted not subject to second prosecution.
Sec. 11. No person compelled to criminate himself.
Sec. 12. Restraint to which accused shall be subjected.

Criminal action defined.

SEC. 1. The proceedings by which a party charged with a public offence is accused, and tried therefor, shall be known as a criminal action.

Parties

SEC. 2. All criminal actions shall be prosecuted in the name of the Territory of Montana. The person accused and prosecuted for the commission of a public offense shall be known as the defendant.

Division of crimes.

SEC. 3. All crimes are divided into misdemeanors and felonies.

Misdemeanors and felonies defined.

SEC. 4. Crimes which do not subject the offender to imprisonment in the territorial prison, or to death, shall be classed as misdemeanors. Crimes which subject the offender to imprisonment in the territorial prison, or to death, shall be classed as felonies.

Indictment and complaint.

SEC. 5. All prosecutions conducted in the district court shall be by indictment. Prosecutions in the probate court, or justice of the peace courts, shall be by complaint.

12th ses. p. 42

Jurisdiction

SEC. 6. The district courts shall have exclusive jurisdiction in all cases of felony and of all offenses not cognizable in the probate courts, or courts of justices of the peace, and jurisdiction concurrent with said courts of all other offenses. The probate courts shall have jurisdiction of all misdemeanors committed in their respective counties when the punishment therefor does not exceed a fine of five hundred dollars, or imprisonment for six months in the county jail, or both such fine and imprisonment. Justices of the peace shall have jurisdiction of all misdemeanors committed in the county in which they shall be qualified to act when the punishment therefor does not exceed a fine of one hundred dollars, or imprisonment for three months in the county jail, or both such fine and imprisonment; but no justice of the peace, or other magistrate, shall acquire jurisdiction over the person of any defendant to finally try such defendant by reason of any complaint made, or by such defendant procured to be made, against himself.

NOTE —Sec. 6 act of Feb. 16, 1881.

Concurrent jurisdiction

SEC. 7. When two or more courts have concurrent jurisdiction over the same offence, the cause shall be tried in that one in which the prosecution shall be first commenced: *Provided*, That nothing in this section shall be so construed as to prevent a change of venue from one court to another.

Conviction of felony.

SEC. 8. No person can be convicted of a felony, unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty.

Rights of defendant

SEC. 9. In a criminal action, the defendant is entitled:

First. To a speedy and public trial.

Second. To be allowed counsel.

Third. To produce witnesses on his behalf, and to be confronted with the witnesses against him in the presence of the court.

Sec. 10. No person shall be subject to a second prosecution of a public offence for which he has once been prosecuted and put in jeopardy, and duly convicted or acquitted.

Same.

Sec. 11. No person shall be compelled, in a criminal action, to be a witness against himself.

Same

Sec. 12. No person charged with a public offence shall be subject before conviction to any more restraint than is necessary for his detention to answer the charge.

Same

CHAPTER II.

PREVENTION OF PUBLIC OFFENCES.

Sec. 13. When person may lawfully resist commission of public offence.
Sec. 14. Duty of sheriff and other public officers to command peace and arrest offenders.
Sec. 15. Duty of magistrate to arrest offenders in certain cases.
Sec. 16. Duty of magistrates and other officers to disperse unlawful assemblies—power to arrest.
Sec. 17. Governor to order necessary force, in certain cases, to execute process or quell riots.
Sec. 18. Power of mayor or other officer to keep peace of city or town.
Sec. 19. Sheriff to command assistance to execute process.
Sec. 20. Magistrates to preserve the peace.
Sec. 21. Duty of magistrates on complaint made of threats against person or property.
Sec. 22. If reason to fear commission of offence, shall issue warrant to arrest, etc.
Sec. 23. Duty of magistrate when offender brought before him.
Sec. 24. If recognizance given, offender discharged; refusal to give, committed to jail.
Sec. 25. Person committed for want of bail, released upon giving bail.
Sec. 26. Duty of district attorney where recognizance is violated.
Sec. 27. Costs taxed against complainant—when.
Sec. 28. When costs taxed against complainant he may appeal to district court.
Sec. 29. Duty of district court on appeal.

Lawful resistance

SEC. 13. Lawful resistance to the commission of a public offense may be made as follows: Any one against whose person, family, or property an offense is threatened and about to be committed, may make sufficient resistance to prevent the commission thereof: or to prevent an illegal attempt by force to take or injure property in his lawful possession. Any other person in aid of him, against whose person, family, or property an offense is threatened and about to be committed, may assist in making sufficient resistance to prevent the perpetration of the offense.

Officer may command the peace and arrest if disobeyed.

SEC. 14. Any sheriff, constable, or public officer, in whose presence any breach of the peace is threatened and about to be committed, may command the peace; and if the person threatening and about to commit the breach of the peace persists in committing the offence, it shall be the duty of such officer to arrest him and take him before the nearest magistrate and make complaint of him for such violation of law.

Summary proceeding by magistrate.

SEC. 15. If any person threaten and be about to commit any breach of the peace, in the presence of any magistrate, it shall be lawful for him to arrest such offender, and without further proceeding compel him to give bail to observe the peace in any sum not to exceed five thousand dollars.

Posse comitatus

SEC. 16. When two or more persons, whether armed or not, shall be unlawfully or riotously assembled in any place, any sheriff, constable, police officer, or magistrate may go among them, or as near to them as possible, and command them to disperse; and if they shall fail or refuse to obey such command, may arrest them; and for the purpose of assisting such officer, the whole force of the county in which such assembly is convened may be called upon by such officer in arresting said offenders.

Governor may call aid from another county

SEC. 17. If it appear to the governor that the power of the county is not sufficient to enable the sheriff or the officer to execute any process delivered to him, or to quell any unlawful or riotous assembly, on the application of the sheriff or other officer, he shall order such force from any other county or counties as shall be necessary.

Mayor, etc may call assistance

SEC. 18. The mayor or other officer having the direction of the police of any city or town, or any sheriff or constable, may place in any public meeting a sufficient force to keep the peace when there are good grounds for believing that a breach of the peace is there to be apprehended.

Sheriff may call aid to execute process.

SEC. 19. When the sheriff or other public officer authorized to execute process shall find or have reason to believe that resistance will be made to the execution of his process, he may command as many male inhabitants of his county, as he may think proper to assist him in overcoming the resistance, and, if necessary, in seizing, arresting, and confining, those resisting; and the officer shall certify to the court from which the process issued the names of the parties so resisting, to the end that they may be punished for contempt.

Powers of magistrates.

SEC. 20. The following magistrates shall have power to cause to be kept all laws made for the preservation of the public peace, and in the execution of that power to require persons to give security to keep the peace in the manner herein provided: The judges of the supreme court throughout the territory, probate judges and justices of the peace in their respective counties, the mayors, or other officers invested with judicial powers, of incorporated cities and towns within the limits of such corporation.

Examination as to threatened offence.

SEC. 21. Whenever complaint shall be made in writing, and upon oath, to any such magistrate, that any person has threatened, or is about to commit any offence against the person or property of another, it shall be the duty of such magistrate to examine such complainant, and any witnesses who may be produced, on oath; to reduce such examination to writing, and cause the same to be subscribed by the parties so examined.

Warrant to be issued.

SEC. 22. If it appear upon such examination that there is reason to fear the commission of any such offence by the person complained of, it shall be the duty of the magistrate to issue a warrant under his hand, with or without seal, stating the complainant's name, and the offence charged, and commanding the officer to whom it is directed forthwith to arrest the person complained of and bring him before such magistrate.

May require bond to keep the peace.

SEC. 23. Upon such person being brought before such magistrate, it shall be his duty to examine all witnesses which either party may require to be examined; and if it shall appear to the satisfaction of such magistrate that there is reason to fear the commission of such offence, he shall require the person complained of to enter into a recognizance in such sum, not exceeding five thousand dollars, as such magistrate shall direct, with one or more sufficient sureties, conditioned that he will keep the peace toward the inhabitants of this territory, and particularly toward the complainant, for such length of time as the magistrate may designate, not to exceed one year, which bond shall be filed by the magistrate with the clerk of the district court of the county in which it was taken, and shall be by such clerk recorded in the order book.

If bond given party to be discharged, otherwise to be committed.

SEC. 24. If such recognizance be given, the party complained of shall be discharged; but if he fail or refuse to find surety, it shall be the duty of the magistrate to commit him to prison until he find the same, specifying in the warrant the cause of commitment and the sum in which surety was required.

Same

SEC. 25. Any person committed for not finding surety, as above provided, may be discharged by any magistrate authorized to bind persons to keep the peace within the county, upon giving such security as was originally required of such person.

Forfeiture of bond

SEC. 26. Upon the violation of any of the conditions of any bond taken, as herein provided, the district attorney may institute suit therein in any court having jurisdiction; and if the defendant shall have been convicted of any offence which would amount to a violation of such bond, the record of such conviction shall be sufficient evidence of forfeiture of such recognizance.

Costs may be taxed against complainant.

SEC. 27. When any person complained of shall be discharged by the magistrate before whom the examination is had, if it appears to the magistrate that the prosecution was malicious, or that there were no grounds that would induce a reasonable man to believe the person complained of was guilty of the crime specified in the complaint, it shall be the duty of said magistrate to adjudge that the complainant shall pay all costs of the proceedings.

Complainant may appeal.

SEC. 28. Any complainant against whom costs are adjudged, may appeal from such decision to the district court in the county in which such proceedings were had, upon filing a bond, approved by the magistrate, that he will pay all costs that may be awarded against him in said district court.

Judgment may be reversed.

SEC. 29. If it shall appear in the district court, to which such action shall be appealed, that said prosecution was not malicious, or that there were grounds which would induce a reasonable man to believe the defendant guilty of the crime charged in the complaint, it shall be the duty of said court to reverse the judgment of the court below, from which the appeal was taken.

CHAPTER III.

LOCAL JURISDICTION OF CRIMES.

Sec. 30. *Where offences are to be tried.*
Sec. 31. *Persons without territory committing offences against the laws, liable.*
Sec. 32. *Jurisdiction where offence committed in different counties, and on boat or vessel.*
Sec. 33. *Jurisdiction in cases of kidnapping, &c.*
Sec. 34. *Jurisdiction in cases of burglary, &c., where property taken from one county to another.*
Sec. 35. *Accessory punished—where.*
Sec. 36. *Where mortal wound given in one county and death ensues in another—jurisdiction.*

SEC. 30. Offences committed against the laws of this territory shall be tried in the county in which the offence is committed; or in that county to which the same is attached for judicial purposes, except as otherwise provided by law.

Venue

SEC. 31. Every person, being without the territory, committing or consummating any offence, by an agent or other means, within the territory, is liable to be punished by the laws thereof, in the same manner as if he were present and had commenced and consummated the offence within the territory.

Liability of non-resident offender

SEC. 32. When a crime has been committed partly in one county and partly in another, or the act or effects constituting or requisite to the consummation of the offence occur in two or more counties, the jurisdiction is in either county, and the court in which the prosecution shall have been first commenced shall have precedence. When a crime is committed in this territory, or on the boundary thereof, on board a boat or vessel navigating a river, or lying therein, the jurisdiction is in any county within or bordering on the line of said river on which the offence is committed.

Venue in certain cases

SEC. 33. The jurisdiction of the following cases is in any county in which the offence was committed, or into or out of which the person upon whom the offence was committed has been brought, or in any county to which the same has been attached for judicial purposes:

Same

First. For forcibly, fraudulently taking, inveigling or kidnapping any person to be sent out of the territory for any purpose.

Second. For the taking or enticing away any female for the purpose of prostitution.

Third. For the taking, decoying or enticing away a child under the age of fifteen years, with intent to conceal or detain it from its parents, guardians, or other person having lawful charge thereof.

Same.

SEC. 34. When property taken in one county by burglary, robbery, larceny or embezzlement, has been brought into another county, the jurisdiction is in either county.

Same

SEC. 35. An accessory before or after the facts may be punished in the county where he committed the offence, or in the county where the principal offence was committed.

Same

SEC. 36. That if any mortal wound is given, or poison administered, in one county, and death by means thereof ensues in another, the jurisdiction is in either county.

CHAPTER IV.

LIMITATION OF CRIMINAL ACTIONS.

Sec. 37. Prosecutions for murder and manslaughter not limited.

Sec. 38. Where penalty cannot exceed ten dollars within six months.

Sec. 39. Misdemeanor prosecuted within three years, and felony, except murder and manslaughter, within five years.

Sec. 40. If offender absent from territory, or conceals himself, absence not included.

No limitation in cases of homicide

SEC. 37. Prosecutions for murder and manslaughter may be commenced at any time after the commission of the offence.

Limitation

SEC. 38. Prosecutions for an offence must be commenced within six months after its commission, when the penalty cannot exceed a fine of ten dollars.

Same.

SEC. 39. In all cases of misdemeanor, prosecutions therefor must be commenced within three years after its commission; and in cases of felony, except murder and manslaughter, prosecution must be commenced within five years.

Same.

SEC. 40. If any person who has committed an offence is absent from the territory, after the commission thereof, or so conceal himself that process cannot be served upon him, the time of the absence or concealment is not to be included in computing the period of limitation.

CHAPTER V.

PROCEEDINGS FOR THE IMPEACHMENT AND REMOVAL OF PUBLIC OFFICERS.

Sec. 41. *All officers created by territorial law subject to impeachment.*
Sec. 42. *All impeachments tried by council.*
Sec. 43. *Articles of impeachment delivered to president of council.*
Sec. 44. *Council to fix a day for hearing; house of representatives to be notified; defendant to have copy of articles, and to be notified of day of trial.*
Sec. 45. *Defendant served personally, if found, if not, may be served by publication.*
Sec. 46. *If defendant does not appear after service, council may proceed or fix another day.*
Sec. 47. *If defendant appear must answer articles.*
Sec. 48. *Objections must be in writing, and specific denial may be oral.*
Sec. 49. *If objections not sustained, defendant to answer forthwith; if he plead guilty, or refuse to plead, to be convicted; if he deny charge, trial to proceed.*
Sec. 50. *Attorney for defendant appointed in certain cases.*
Sec. 51. *Council to be sworn by secretary of the territory.*
Sec. 52. *Trial to proceed after oath administered.*
Sec. 53. *Two-thirds vote necessary to convict.*
Sec. 54. *After conviction; judgment pronounced—how.*
See. 55. *Resolution adopted by majority vote to be judgment.*
Sec. 56. *Judgment—what it may be.*
Sec. 57. *Judgment of suspension—consequence.*
Sec. 58. *When articles presented, officer to be suspended; governor to fill vacancy—how.*
Sec. 59. *Impeachment not bar to indictment.*
Sec. 60. *Penalty of officer convicted of corrupt conduct in office.*
Se . 61. *County commissioners to suspend officer believed guilty of embezzlement; duty to appoint successor during such suspension.*
Sec. 62. *District attorneys territorial officers, for purposes of impeachment.*

Who may be impeached.

SEC. 41. Any territorial officer, created by territorial law, shall be liable to impeachment for any misdemeanor in office.

Tried by the council

SEC. 42. All impeachments shall be tried by the council; when sitting for that purpose the council shall be upon oath or affirmation.

Articles of impeachment.

SEC. 43. When a civil officer of the territory is charged by the house of representatives, with a misdemeanor in office, the articles specifying the crime shall be delivered to the president of the council.

Time for hearing, notice and service.

SEC. 44. The council shall assign a day for hearing the impeachment, and shall inform the house of representatives thereof. The president of the council shall cause a copy of the articles of impeachment, with a notice to appear and answer the same, at the time and place appointed, to be served on the defendant, not less than ten days before the day fixed for hearing.

Service, how made

SEC. 45. The service must be upon the defendant personally, if he can be found within the territory, and if not, upon diligent inquiry, the council, upon proof of that fact, may order that publication be made, in such manner as they may deem proper, of a notice requiring him to appear at a specified time and place, and answer the articles of impeachment.

Proceedings if defendant fails to appear.

SEC. 46. If the defendant does not appear, the council, upon proof of service, personally, or by publication, as provided in the last two sections, may on their own motion, or for cause shown, assign another day for hearing the impeachment, or may then proceed in the absence of the defendant to hear the same and render judgment.

Answer.

SEC. 47. When the defendant appears, he must answer the articles of impeachment, which he may do either by objecting to the sufficiency of the same, or of any of the articles therein, or by denying the truth of the same.

Same.

SEC. 48. If the defendant object to the sufficiency of the articles of impeachment, the objection must be in writing, pointing out specifically in what the insufficiency consists; but the allegation need not be in any specific form; if he deny the truth of the articles of impeachment, the denial may be oral and without oath, and shall be entered upon the journal of the council.

Proceedings after answer

SEC. 49. If an objection to the sufficiency of the articles of impeachment be not sustained by a majority of the members of the council who heard the argument, the defendant shall be ordered forthwith to answer the articles of impeachment; if he plead guilty, or refuse to plead, the council shall render judgment of conviction against him; if he deny the matters charged, the council shall, at such time as it may appoint, proceed to try the defendant.

Attorney to to be appointed for defendant.

SEC. 50. If the defendant appear, and is unable to procure the assistance of an attorney, it shall be the duty of the president of the council to appoint some suitable person to assist him in his defence; if the defendant is served by publication and fails to appear, it shall be the duty of the president of the council to appoint some attorney to appear in his behalf, and make defence for him.

President and council to be sworn.

SEC. 51. At the time and place appointed, and before the council proceed to act on the impeachment, the secretary of the territory shall administer to the president of the council, and to each of the members present, an oath or affirmation, truly and impartially to hear, try, and determine the truth of the articles of impeachment, to the best of their knowledge and ability; and no member of the council shall act or vote upon the impeachment or any question arising therefrom, without having taken such an oath or affirmation.

Trial.

SEC. 52. The oath or affirmation having been administered, the council shall proceed to try and determine the impeachment, and may adjourn the trial from time to time.

Two-thirds necessary to convict

SEC. 53. The defendant cannot be convicted without the concurrence of two-thirds of the members present; and if two-thirds of the members present do not concur in the conviction, the defendant shall be declared acquitted.

Judgment.

SEC. 54. After conviction the council shall immediately, or at such other time as they shall appoint, pronounce judgment, which shall be in the form of a resolution, entered upon the journal of the council; and the vote upon the passage thereof shall be taken by ayes and nays, which shall, in like manner, be entered upon the journal.

Same

SEC. 55. On the adoption of the resolution by a majority of the members present, who voted on the question of acquittal or conviction, the same shall be the judgment of the council.

Same

SEC. 56. The judgment may be that the defendant be suspended or removed from office, or that he be removed from office and disqualified to hold and enjoy a particular office or class of offices; or any office of trust, honor, or profit in this territory.

Same

SEC. 57. If judgment of suspension be given, the defendant shall, during the continuance thereof, be disqualified from receiving the salary, emoluments, or fees of the office.

Suspension of accused.

SEC. 58. When articles of impeachment against any officer subject to impeachment shall be presented to the president of the council, such officer shall temporarily be suspended from his office, and shall not act in his official capacity until duly acquitted. Upon such suspension of any territorial officer, created by territorial law, the governor shall immediately appoint some suitable person to take charge of his office, by and with the advice of the council, until the acquittal of the defendant; or in case of his removal, until the vacancy be filled as provided by law; and such appointee shall give the bonds required by law for the faithful discharge of his duties,.

May also be indicted.

SEC. 59. If the offence for which the defendant is impeached be the subject of an indictment, the indictment shall not be barred by the impeachment.

Penalty in case of other than territorial officer.

SEC. 60. Any county, district or township officer, who shall be duly convicted of any crime which involves a wilful and corrupt misconduct in his office, shall have, in addition to the penalty usually affixed to such crimes, the further one of forfeiture of any and all offices of trust he may hold, and it shall be the duty of the court in which such offender may be convicted, to enter judgment that he be removed from all offices of honor, trust, or profit; and may add, that he shall be forever disqualified from holding any such office in this territory.

Suspension of county officer.

SEC. 61. When any person holding any county office shall have been indicted for the embezzlement of any moneys which have come into his hands by virtue of his office, the county commissioners of the proper county shall have power, if, upon due examination, they find that there are good grounds for believing the said person guilty of the charge set forth in the indictment, of suspending him from office, until the indictment against him is finally disposed of; and they shall have the power, and it shall be their duty, to appoint some qualified person to discharge the duties of such office during the suspension of such office.

SEC. 62. For the purposes of impeachment, the district attorney for the several districts of this territory shall be considered and classed as territorial officers. District attorneys.

CHAPTER VI.

ARREST AND EXAMINATION OF OFFENDERS.

Sec. 63. *Arrest—definition of.*

Sec. 64. *How and by whom arrests may be made.*

Sec. 65. *Officer making arrest shall state his authority.*

Sec. 66. *Officer having authority to arrest, shall make arrests without warrants in certain cases.*

Sec. 67. *A private person may make arrests in certain cases.*

Sec. 68. *Duty of officer and private person in making arrests without warrant.*

Sec. 69. *Duty of private person after making arrest.*

Sec. 70. *Offence about to be committed in presence of magistrate—duty of magistrate.*

Sec. 71. *How arrest shall be made, and extent of restraint.*

Sec. 72. *In case offender flee, power of officer.*

Sec. 73. *All persons to aid officer when required.*

Sec. 74. *Persons escaping may be re-arrested.*

Sec. 75. *Duty of person knowing crime to have been committed, to make complaint.*

Sec. 76. *What complaint shall contain.*

Sec. 77. *Duty of magistrate before whom complaint is made.*

Sec. 78. *Officer pursuing from one county to another.*

Sec. 79. *Person making complaint to inform magistrate, &c.*

Sec. 80. *Defendant may enter into recognizance without trial where offence not punishable with death or imprisonment in the penitentiary.*

Sec. 81. *In cases mentioned in last section, magistrate to endorse amount of bail.*

Sec. 82. *Duty of magistrate taking bail—witnesses to be summoned.*

Sec. 83. *If magistrate, where arrest made, do not admit to bail, accused taken before magistrate who issued warrant.*

Sec. 84. When offence charged punishable with death, or imprisonment in the penitentiary, prisoner to be taken to county where warrant issued.

Sec. 85. All persons arrested shall be taken before magistrate.

Sec. 86. Magistrate may adjourn examination or trial.

Sec. 87. If person recognized default, duty of magistrate.

Sec. 88. If accused do not give bail, committed to prison.

Sec. 89. Person arrested without warrant and taken before magistrate; duties of certain officers.

Sec. 90. Duty of committing magistrate when accused is brought before him.

Sec. 91. Legal evidence only received.

Sec. 92. Witnesses examined in presence of defendant; if either party demand, evidence taken in writing.

Sec. 93. Defendant may make statement under oath; prosecution may cross-examine.

Sec. 94. Magistrate may consider defendant's statement.

Sec. 95. Examination not be delayed; may be continued.

Sec. 96. Duty of magistrate on examination.

Sec. 97. If not probable cause of guilt, defendant to be discharged.

Sec. 98. When defendant committed, magistrate to endorse amount of bail on mittimus; exceptions.

Sec. 99. Witnesses to be recognized if defendant held to bail.

Sec. 100. Magistrate may require witnesses to give security on recognizance.

Sec. 101. How recognizance of married woman or minor to be taken.

Sec. 102. If witness refuse to recognize, to be imprisoned.

Sec. 103. Judge of court of record may admit to bail, if prisoner committed for bailable offence.

Sec. 104. Examining magistrate may associate one or more magistrates with himself.

Sec. 105. Magistrate to certify examinations and recognizances to clerk of court having jurisdiction.

Sec. 106. Person under recognizance defaulting, judgment against.
Sec. 107. Surety on recognizance discharged by surrendering principal.
Sec. 108. Recognizance not barred nor defeated by defect, etc.
Sec. 109. When defendant's statement made, witnesses for defendant excluded from court.
Sec. 110. Examining magistrate to file all papers with clerk of court to which prisoner recognized.
Sec. 111. Defendant may waive examination; order of court.
Sec. 112. Accused admitted to bail except in cases punishable with death.
Sec. 113. Either party may have witnesses excluded; duty of magistrate to instruct witnesses.
Sec. 114. When magistrate holds defendant to bail, to endorse order on complaint.
Sec. 115. Form of order.
Sec. 116. Form of order when defendant discharged.

Arrest

SEC. 63. Arrest is the taking of a person into custody that he may be held to answer a public offence.

By whom made

SEC. 64. An arrest may be made in the following manner:

First. By a peace officer under a warrant.

Second. By a peace officer without a warrant.

Third. By a private person.

Arrest upon warrant.

SEC. 65. When an officer arrests a person, in pursuance of a warrant directed to him, he shall state by what authority he makes the arrest; and, if requested by the person arrested, shall show his warrant.

Arrest without warrant.

SEC. 66. An officer having authority to make arrests, shall arrest a person without a warrant:

First. When a person is attempting or has committed a public offence.

Second. When a felony in fact has been committed, and he has reasonable grounds for believing the person arrested has committed the same.

Third. Where he has reasonable grounds to believe that a person has committed an offence, and that he may escape or attempt to escape, before he can be arrested by a warrant issued by some proper officer.

Arrest by private person

SEC. 67. A private person may make an arrest:

First. For a public offence committed or attempted to be committed in his presence.

Second. When he has reasonable cause for believing that a person has committed a felony, and that said person may flee before he can be arrested by a proper officer.

Duty of officer without warrant or of private person in making arrest.

SEC. 68. An officer acting without a warrant, must first state his official character and the reason for making the arrest, unless the person about to be arrested is in the actual commission of the offence, or when he is pursued, after an escape or flight. A private person before making an arrest shall state to the person about to be arrested the cause thereof, and require him to submit, except when such person is in the actual commission of the offence, at the time thereof, or is in actual flight thereafter.

Duty of private person after making arrest.

SEC. 69. A private person who has made the arrest of another must, without unnecessary delay, take him before a magistrate or deliver him to a peace officer.

Magistrate may verbally order arrest

SEC. 70. When a public offence is, or is about to be committed, in the presence of a magistrate, he may, by verbal order, command any person or persons to arrest the offender; and may thereupon proceed as if the offender had been brought before him on a warrant of arrest.

Restraint.

SEC. 71. An arrest shall be made by the actual restraint of the person of the defendant, or by his submission to the custody of the officer or private person, the defendant shall not be subject to any more restraint than is necessary for his arrest and detention.

Power of officer

SEC. 72. If, after notice of intention to arrest a person by an officer, said person flee or forcibly resist, the officer may use all necessary means to effect the arrest.

Aid to officer.

SEC. 73. Every person required by an officer, shall aid him in making an arrest.

Arrest of escaped prisoner

SEC. 74. If a person arrested escape or be rescued, the person from whom he escaped or was rescued may immediately pursue and retake him at any time and any place within this territory.

Duty to make complaint

SEC. 75. It shall be the duty of every person who has knowledge that any person has committed an offence against the public, or who knowing that a public offence has been committed and has reasonable cause for believing that a certain person has committed the same, to proceed before some magistrate within the county where the offence was committed and make complaint of such person.

The complaint.

SEC. 76. The complaint must state the name of the person accused, if known, and if not known, he may be designated as Richard Roe, whose real name is unknown to complainant, the county in which the offence was committed, the time when the same was committed, to the best of complainant's knowledge and belief, the general name of the offence, as murder, grand larceny, assault and battery, and the person against whom or against whose property the offence was committed, if the same be known; and if the offence be against the property of any person, the general description of the property; the complaint must be subscribed and sworn to by complainant.

14th ses p 40.

SEC. 77. When a complaint is made before any magistrate, charging any person with the commission of a public offence, it shall be the duty of such magistrate to examine the complainant, under oath, touching his knowledge of the commission of such offence. If from such evidence and other facts which may lawfully come to the knowledge of such magistrate it shall appear to him that probable cause exists to support the belief that the alleged offence has been committed within his jurisdiction, and that the accused party has committed said offence, such magistrate shall immediately issue his warrant to any peace officer having authority to make arrests in his county, commanding him to forthwith arrest such offender, at any place in the territory, and bring him before such magistrate; or, in case he shall be unable to act, before some other magistrate within the county, to be dealt with according to law.

Warrant.

NOTE—Section 77 from act of Feb 6th, 1885.

Officer may arrest in any county.

SEC. 78. An officer pursuing a person, for whom he has a warrant, into another county than the one for which he holds office, may, in the county where he may find such fugitive, call for assistance, and command aid, and exercise authority, as if in his own county.

Subpœnas for witnesses

SEC. 79. It shall be the duty of any person making complaint of any offence, to inform the magistrate before whom he makes the same, of all persons who have any knowledge of the commission of the offence; and it shall be the duty of the magistrate, at the time of issuing the warrant, to issue subpœnas for such persons, requiring them to attend at a specified time, as witnesses.

Bail may be given where arrest made in certain cases

SEC. 80. In cases where the offence charged in the warrant is not punishable with death, or imprisonment in the territorial prison, if the person request that he may be brought before a magistrate in the county in which the arrest was made, for the purpose of entering into a recognizance, without a trial or examination, the officer making the arrest shall take him before a magistrate of that county, who may take from the person arrested a recognizance, with sufficient sureties, for his appearance at the court cognizant of the offence, and next to be holden in the county where it is alleged to have been committed; and the party arrested shall thereupon be liberated.

Amount of bail to be endorsed on warrant

SEC. 81. In all such cases, the magistrate issuing the warrant shall endorse thereon the amount of bail, which any defendant shall give, before he shall be discharged.

Certificate and recognizance.

SEC. 82. The magistrate who shall let the person arrested to bail, shall certify the fact upon the warrant, and shall deliver the same, with the recognizance by him so taken, to the person who made the arrest, who shall cause the same to be delivered, without unnecessary delay, to the clerk of the court before which the accused was recognized to appear; and on application of the complainant, the magistrate who issued the warrant shall cause such witnesses to be summoned to the same court as may be by him deemed necessary.

If magistrate refuses bail or if bail is not offered.

SEC. 83. If the magistrate in the county where the arrest was made shall refuse to admit to bail the person so arrested and brought before him, or if no sufficient bail shall be offered, the person having him in charge shall take him before the magistrate who issued the warrant, or, in his absence, before some other magistrate of the county in which the warrant was issued, to be proceeded with according to law.

In felony prisoner to be taken to county issuing warrant.

SEC. 84. When the offence charged in any warrant is punishable with death, or imprisonment in the territorial prison, the officer making the arrest in some other county shall convey the prisoner to the county where the warrant was issued, and he shall be proceeded with in the manner directed by law.

In case no provision is made for examination

SEC. 85. Every person arrested by warrant for any offence, where no other provision is made for his examination thereon, shall be brought before some magistrate of the same county, and the warrant, with the proper return thereon, signed by the person who made the arrest, shall be delivered to such magistrate.

Adjournment of examination.

SEC. 86. Any magistrate may adjourn an examination or trial pending before himself, from time to time, as occasion shall require, not exceeding ten days at one time, without the consent of the person charged, and to the same or a different place in the county, as he shall think proper; and in such case, if the party is charged with a capital offence, he shall be committed in the meantime; otherwise he may be recognized in a sum, and with sureties, to the satisfaction of the magistrate, for his appearance for such further examination, and for want of such recognizance he shall be committed to prison.

Default

SEC. 87. If the person so recognized shall not appear before the magistrate at the time appointed for such further examination, according to the condition of such recognizance, the magistrate shall record the default, and shall certify the recognizance with the record of such default, to the district court; and like proceedings shall be had thereon as upon the breach of the condition of a recognizance for appearance before the court.

Imprisonment in case bail not given.

SEC. 88. When such person shall fail to give bail, he shall be committed to prison by an order under the hand of the magistrate, stating concisely that he is committed for further examination on a future day, to be named in the order; and on the day appointed he may be brought before the magistrate, by his verbal order to the same officer by whom he was committed, or by an order in writing to a different person.

Proceedings in arrest without warrant

SEC. 89. When any officer or private person shall bring any one he has arrested, without a warrant, before a magistrate, it shall be the duty of said officer or person to specify the charge upon which he has made the arrest; it shall then be the duty of the magistrate or prosecuting attorney to make out a complaint of the offence charged, and cause the said officer or person, or some other person, to subscribe and make oath to such complaint; and the proceedings shall be the same thereafter as are had in cases where arrests are made under warrant.

Accused entitled to counsel.

SEC. 90. When a defendant is brought before a committing magistrate for a preliminary examination, it shall be the duty of such magistrate to inform him that he is entitled to the assistance of counsel; and, if he desires it, give him ample time to procure the same; and if he states that he is unable to procure the assistance of counsel, it shall be the duty of such magistrate to appoint some suitable person to appear and conduct the proceedings for him.

Legal evidence.

SEC. 91. Legal evidence, only, shall be received on examination.

Examination of witnesses.

SEC. 92. All the witnesses for the prosecution shall be examined in the presence of the defendant If either party demand it, all or any part of the testimony introduced must be written down by the magistrate, or some one he may appoint, and subscribed to by the witness making the same.

Right of defendant.

SEC. 93. The defendant, if he desire it, may make a statement under oath of any matters that may explain his connection with the charge against him, or will exonerate him therefrom. The prosecution shall have the right to cross-examine him upon any statement he may make. His statement, and cross-examination thereon, must be written down by the magistrate, or by some one he may appoint, and being read over in the hearing of the defendant, subscribed by him.

Effect of testimony.

SEC. 94. The magistrate may give such weight to the statement of the defendant as he may think, under all circumstances, it may deserve.

No unnecessary delay

SEC. 95. The magistrate shall proceed with the examination without unnecessary delay; but for good cause shown, may continue the hearing for any time not to exceed twenty days, during which time the defendant may remain in custody if not admitted to bail.

If probable cause defendan to be held.

SEC. 96. If the magistrate, upon examination of the testimony before him, finds that there is probable cause for believing the defendant guilty of the charge made against him in the complaint, or of any other criminal offence, it shall be the duty of such magistrate to commit him to jail, to be held to appear at the following term of the district court, where the same is cognizable, to answer any charge the grand jury may prefer against him, unless he give *sufficient bail.*

Discharge.

SEC. 97. If the magistrate finds, from the evidence, that there is no probable cause for believing the defendant guilty of the offence charged, or of any other criminal offence, he shall be discharged.

Bail.

SEC. 98. When any defendant is committed to answer for any crime not punishable with death, it shall be the duty of the magistrate to endorse on the back of the commitment the amount of bail which he shall give, in order to be discharged from custody.

Recognizance of witnesses.

SEC. 99. On holding the defendant to answer, the magistrate shall take from each material witness examined on the part of the prosecution a recognizance, and also one from each material witness on the part of the defendant, if he desire it, conditioned to pay the the sum of five hundred dollars should he fail to appear and testify, as required, at the term of court at which the defendant is required to appear.

SEC. 100. If any magistrate shall be satisfied that there is good cause to believe that any such witnesses will not perform the condition of their recognizance, unless other security be given, such magistrate may order the witnesses to enter into a recognizance with such sureties as may be deemed necessary to insure their appearance at court.

Sureties of witness

SEC. 101. When any married woman or minor is a material witness, any other person may be allowed to recognize for the appearance of such witness; or the magistrate may, in his discretion, take the recognizance of such married woman or minor in a sum not exceeding fifty dollars, which shall be valid and binding in law, notwithstanding the disability of coverture or minority.

When married woman or minor is witness.

SEC. 102. All witnesses required to recognize either with or without sureties, shall, if they refuse, be committed to prison by the magistrate, there to remain until they comply with such order or be otherwise discharged according to law.

When witness may be committed.

Any person who is recognized to appear in any criminal case, or otherwise detained as a witness, and is unable to give the security required, and in consequence thereof is taken in custody, awaiting a term of court, shall be entitled to receive from the county in which he is so detained, the sum of two dollars for each day he is so detained, *Provided*, That the judge of the court in which the action in which such person may be detained is pending, shall certify to the board of county commissioners of said county, that the testimony of such witness is or was necessary in such action for the protection of the public interests.

13th ses p 107

Compensation of witness

NOTE—Last paragraph of section 102, Act of March 8th, 1883

SEC. 103. Any judge of a court of record, on application of any prisoner committed for a bailable off ce, may inquire into the case and admit such pris er to bail, and any person committed for not finding ıfficient sureties or refusing to give bail, may be admitted to bail by either of said judges, or by the committing magistrate.

Defendant or witness admitted to bail.

SEC. 104. Any magistrate to whom complaint is made, or before whom any prisoner is brought, may associate with himself one or more magistrates of the same county, and they may, together, execute the powers and duties before mentioned.

Associate magistrates.

SEC. 105. All examinations and recognizances taken by any magistrate as provided herein, shall be certified and returned by him to the clerk of the court

Proceedings to be certified.

having jurisdiction of the offence, and to which the party charged is required to appear, on or before the first day of the next term thereof, and if such magistrate shall neglect or refuse to return the same, he may be compelled forthwith by rule of court, and, in case of disobedience, may be punished as for contempt.

Default of person under recognizance.

SEC. 106. When any person under recognizance in any criminal prosecution, either to appear and answer, or to prosecute an appeal, or to testify in any court, shall fail to perform the condition of such recognizance, his default shall be recorded, and judgment entered against him for the amount of such bond, and proceedings may be taken to recover judgment against any or all of the sureties thereto in any court having jurisdiction.

Surrender of defendant.

SEC. 107. Any surety in such recognizance may be discharged from any liability thereon, at any time before final judgment against him, upon surrendering to the court or the proper officer the principal in such recognizance, or by paying to the clerk of the court the amount for which he was bound as surety, with such costs as the courts shall direct.

What will not bar action on recognizance.

SEC. 108. No action brought on a recognizance shall be barred or defeated, nor shall judgment thereon be arrested by reason of any neglect or omission to note or record the default of any principal or surety at the term when such default happened, nor by reason of any such defect in the form of the recognizance, if it sufficiently appear from the tenor thereof, at what court the party or witness was bound to appear, and that the court or magistrate before whom it was taken, was authorized by law to require and take such recognizance.

Statement of defendant.

SEC. 109. When the defendant wishes to make a statement to the magistrate, it shall be his duty to exclude all of the witnesses for the defendant from the court room until after he has finished, if said statement is made before said witnesses have testified.

Papers to be sent to clerk.

SEC. 110. The magistrate, as soon as practicable after the examination, shall send to or file with the clerk of the court at which he has held the defendant to answer, the complaint, all written evidence, the statement of defendant, if any is made, any recognizance he may have taken, and all orders he may have made in the hearing of the matter.

Waiver of examination.

SEC. 111. Any defendant brought before a committing magitrate may waive a preliminary examination. In such cases the magistrate shall make a minute of such waiver, and make the same order as though he had found that there was probable cause for believing the defendant guilty of the offence charged.

No bail in capital case

SEC. 112. Persons charged with an offence punishable with death shall not be admitted to bail where the proof is positive or the presumption great; but, for other offences, bail may be taken for such sums as, in the opinion of the magistrate, will secure the appearance of the person charged with the offence at the court where such person is to be tried.

Exclusion of witnesses

SEC. 113. Either party may require the witnesses of the opposite party to be excluded from the presence of the committing magistrate during the examination. In such cases, the witnesses must be ordered to remain within the calling of the court, and they shall be called, one by one, and examined. The magistrate must instruct the witnesses, that they shall hold no conversation about the matter in hearing during their exclusion.

Order endorsed on complaint

SEC. 114. When the magistrate holds a defendant to appear at the district court, having cognizance of the offence, there to answer the same, he shall endorse on the complaint, or attach thereto, one of the following orders according to the facts in the next section.

Form of order.

SEC. 115. "It appearing to me from the evidence herein, that there is probable cause for believing the defendant, A. B., guilty of the offence set forth in this complaint (or any other offence, as the case may be), I therefore order, that he be held to answer the same at the next term of the district court, to be held in ——— county, and have him admitted to bail, in the sum of ——— dollars, by the recognizance hereto annexed" (if he does not give bail before his commitment to the custody of the sheriff), then an order that he may be admitted to bail in the sum of ——— dollars. If the offence be not bailable, then, "I therefore order that he be held to answer the same, at the next term of the district court, to be held in ——— county, and have committed him to the custody of the sheriff, without bail."

Order of discharge

SEC. 116. If the magistrate find from the evidence before him, that there is no probable cause for believing the defendant guilty of the offence charged, or any other criminal offence, he shall make the following order on the complaint: "I find from the evidence there is no probable cause for believing the defendant guilty. I therefore order that he be discharged."

CHAPTER VII.

GRAND JURIES AND THEIR PROCEEDINGS.

Sec. 117. *Grand jury—number composing.*

Sec. 118. *Grand jury subject to challenge.*

Sec. 119. *What challenge may be for.*

Sec. 120. *Causes of challenge to an individual grand juror.*

Sec. 121. *Right of party in custody to challenge, to be brought into court for that purpose.*

Sec. 122. *Right of person recognized to challenge, duty to appear in court and show cause.*

Sec. 123. *If challenge allowed to panel; effect of.*

Sec. 124. *If challenge allowed to individual juror, for causes first, second, or third—effect of.*

Sec. 125. *When challenge allowed for other causes; court shall charge juror.*

Sec. 126. *Grand jury sworn; form of oath.*

Sec. 127. *Grand jury charged by the court.*

Sec. 128. *Grand jury may be sworn as to testimony of witness before grand jury.*

Sec. 129. *Grand juror not to disclose vote, or opinion of any grand juror.*

Sec. 130. *Grand juror not to disclose name of witness or evidence before grand jury, nor fact of indictment having been found.*

Sec. 131. *Duty of court in charging grand jury.*

Sec. 132. *Authority of foreman to administer oath.*

Sec. 133. *One of grand jury may be appointed clerk.*

Sec. 134. *Duty of prosecuting attorney to attend grand jury.*

Sec. 135. *Right of prosecuting attorney to appear before grand jury.*

Sec. 136. *Clerk to issue subpœnas when required.*

Sec, 137. *Witness failing to appear; duty of court:*

Sec. 138. *Witness refusing to testify; duty of court.*

Sec 139. *If court decide, witness shall answer—proceeding.*

Sec. 140. *If witness persist in refusing to testify, to be imprisoned.*

Sec. 141. *Court may, in certain cases, summons another grand jury.*

Sec. 142. Duty of sheriff in summoning such grand jury.
Sec. 143. Powers and duties of grand juries.
Sec. 144. Indictment—definition of.
Sec. 145. Only legal evidence received before grand jury.
Sec. 146. Grand jury not bound to hear evidence for defendant; but may summons evi to explain charge.
Sec. 147. Duty of grand jury to find indictment—when.
Sec. 148. Duty of juror having reason to believe an offence has been committed.
Sec. 149. Matters which grand jury must enquire into.
Sec. 150. Twelve jurors must concur in finding indictment; indictment—how indorsed.
Sec. 151. When twelve jurors do not concur, foreman to certify.
Sec. 152. When indictment found, presented to the court and filed.
Sec. 153. Name of prosecutor endorsed, etc.
Sec. 154. Name of prosecutor by whom endorsed; effect of, if not endorsed.
Sec. 155. Presentment not necessary.
Sec. 156. By whom indictment signed.
Sec. 157. Names of material witnesses endorsed, etc.
Sec. 158. If defendant not held to answer, when indicted, to be arrested.
Sec. 159. If offence bailable, court may endorse amount of bail on warrant.
Sec. 160. If court fail, or absent, clerk to fix bail.

Number of grand jurors.

Sec. 117. The grand juries shall consist of sixteen persons, one of whom shall be appointed foreman by the court.

Note—Act May 7th, 1873

Challenge.

Sec. 118. A challenge may be interposed to the grand jury before the same is sworn, by either the territory, or by any defendant who has been held to answer for any offence. The challenge may be to the panel, or to an individual juror, for any of the following causes, mentioned in the next section.

Challenge to panel.

Sec. 119. The challenge to the panel may be for the cause that the same was not drawn in accordance with the essential provisions of the law of this territory; such challenge must specify wherein the drawing did not comply with its requirements.

Challenge to jurors

SEC. 120. The challenge to an individual grand juror may be interposed, for one or more of the following causes:

First That the juror is a minor.

Second. That he is an alien.

Third. That he is insane.

Fourth. That he is the prosecutor on the charge against the defendant.

Fifth. That he is a witness on the part of the prosecution, and has been served with process, or is bound by recognizance as such.

Challenge by prisoner

SEC. 121. When a party has been held to answer for an offence, and is in custody of an officer, it shall be the duty of the judge presiding, before the grand jury is sworn, to direct the sheriff of the county to bring such person into court, and there notify him of his rights in relation to the challenging of the jury, and, if necessary, appoint counsel for him. If such person then fails to challenge the grand jury, or any member thereof, he shall be deemed to have waived all objections to the same.

Challenge by person on bail

SEC. 122. If any person shall be held to answer for any offence, and has been admitted to bail, it shall be his duty to appear in court at the time the grand jury is called, and upon the court advising all persons who have been held to appear, and have been admitted to bail, to appear and make known their cause of challenge, if they have any, against the grand jury; if he fail to interpose any challenge, either to the panel of the jury, or to any individual juror, he shall be deemed to have waived the same.

If challenge allowed to panel.

SEC. 123. If a challenge is allowed to the panel of the grand jury, the court shall discharge the same, and order a venire to issue for a new grand jury in accordance with law.

If challenge allowed to juror.

SEC. 124. If a challenge is allowed to an individual juror for the first, second, or third causes, such person shall be excused from the jury, and if there be not enough jurors to complete the panel left, the court shall order a venire to issue to complete the same.

Same.

SEC. 125. When a challenge is allowed to any juror for either the fourth or fifth causes therefor, the court shall charge the juror that he must not act as a grand juror in any manner in the investigation of the charge against the person challenging; and that any violation of this order will be considered a contempt of court.

Oath

SEC. 126. When the panel of the grand jury is completed, the following oath or affirmation, in substance, shall be administered to them: "You and each of you do solemnly swear (or affirm) that you will diligently inquire into, and true presentment make, of all public offences against the laws of this territory, committed or triable in this county, of which you have or can obtain legal evidence. You will present no one through hatred, malice, or ill will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof; but in all your presentments you will present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God."

Charge

SEC. 127. The grand jury being empanelled and sworn, shall be charged by the court. In doing so, the court shall give them such information as it may deem proper as to the nature of their duties, and any charges for public offences returned to the court, or likely to come before the grand jury; the court need not, however, charge them respecting violations of any particular statute, except when specially required by law.

Grand juror when allowed to testify

SEC. 128. Members of the grand jury may be required by any court to testify whether the testimony of a witness, examined before such grand jury, is consistent with or different from the answers give by such witness before such court; and they may also be required to disclose the testimony given before them by any person upon a complaint against such person for perjury, or upon his trial for such offence.

Grand juror: when not allowed to testify

SEC. 129. No member of the grand jury shall be compelled or allowed to testify or disclose in what manner he or any other member of the grand jury voted on any question before them; or what opinions were expressed by any juror in relation to any such question.

Grand juror: what he may not disclose

SEC. 130. No grand juror shall disclose any evidence given before the grand jury, nor the name of any witness who appeared before them, except when lawfully required to testify as a witness in relation thereto; nor shall he disclose the fact of any indictment having been found against any person for a felony, not in actual confinement, until the defendant shall have been arrested thereon. Any juror violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, may be fined in any sum, not exceeding five hundred dollars, to which may be added imprisonment not exceeding six months.

To be charged as to disclosures.

SEC. 131. In charging grand juries, the court shall apprise them of the last three sections in relation to disclosures, and in what case and under what circumstances any disclosures may or may not be made.

Foreman may administer oath

SEC. 132. The foreman of every grand jury, from the time of his appointment to his discharge, shall be authorized to administer any oath, declaration, or affirmation, in the manner prescribed by law, to any witness who shall appear before such grand jury for the purpose of giving evidence of any matter cognizable by them.

Clerk of grand jury

SEC. 133. Every grand jury may appoint one of their number to be clerk thereof, to preserve minutes of their proceedings, and of the evidence given before them; which minutes shall be given to the attorney prosecuting in the county, when so directed by the grand jury.

Duty of prosecuting attorney.

SEC. 134. Whenever required by any grand jury, it shall be the duty of the attorney prosecuting in the county, to attend them for the purpose of examining witnesses in their presence or giving them advice upon any legal matter.

When attorney may appear before jury.

SEC. 135. Such attorney shall be allowed at all times to appear before the grand jury, on his request, for the purpose of giving information relative to any matter cognizable by them, when they or he shall deem it necessary, but no such attorney, or any other officer or person except the grand jurors shall be permitted to be present during the expression of their opinions or the giving their votes, on any matter before them.

Subpœnas.

SEC. 136. Whenever required by any grand jury, the foreman thereof, or the attorney prosecuting, the clerk of the court in which such jury is empanelled shall issue subpœnas and other processes to bring witnesses to testify before such grand jury.

Defaulting witness.

SEC. 137. If any witness duly summoned to appear and testify before a grand jury, shall fail or refuse to obey, the court shall cause compulsory process to be issued to enforce his attendance, and may punish the delinquent in the same manner and upon like proceedings as provided by law for disobedience of a subpœna in other cases.

Witness refusing to testify

SEC. 138. If any witness appearing before a grand jury shall refuse to testify, or answer interrogatories in the course of his examination, the fact shall be communicated to the court, in writing, in which the question refused to be answered shall be stated, and the court shall thereupon determine whether the witness is bound to answer or not, and the grand jury shall be immediately informed of the decision.

Same.

SEC. 139. If the court determine that the witness is bound to answer, and he persists in his refusal to testify, he shall be brought before the court, who shall proceed therein in the same manner as if the witness had been interrogated and refused to answer in open court.

Same.

SEC. 140. If any such witness shall be committed for a contempt, on account of his refusal to testify, and shall persist in such refusal, until the grand jury is dismissed, or until the expiration of his imprisonment, he shall not be discharged from custody before the meeting of the next grand jury, when he shall be again brought before said grand jury, and if he fail or refuse again to testify, he shall be recommitted.

Another grand jury may be summoned, when.

SEC. 141. If any offence be discovered or committed during the sitting of any court, after the grand jury attending such court shall be discharged, or if the grand jury impannelled is not competent as such to investigate the charge against any person held to answer for the offence, such court may, in its discretion, by an order, to be entered on its minutes, direct the clerk of the court to issue a venire to the sheriff, commanding him to summon another grand jury.

Duty of sheriff in such case.

SEC. 142. The sheriff shall, accordingly, forthwith summon such grand jury, from the inhabitants of the county qualified to serve as grand jurors, who shall be returned and sworn, and shall proceed in the same manner in all respects as provided by law in respect to other grand juries.

Power of grand jury.

SEC. 143. The grand jury has the power, and it is their duty, to inquire into all public offences committed or triable within the jurisdiction of this court, and to present them to the court by indictment.

Indictment.

SEC. 144. An indictment is an accusation in writing, presented by the grand jury to a competent court, charging the person with a public offence.

Kind of evidence

SEC. 145. In the investigation of any charge for the purpose of finding an indictment, the grand jury shall receive none but legal evidence.

Evidence for defendant.

SEC. 146. The grand jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require process to be issued for such witnesses.

When indictment to be found.

SEC. 147. It shall be the duty of the grand jury to find an indictment when all the evidence before them is such as, in their judgment, would warrant a trial jury in a conviction if the same remained unexplained or uncontradicted.

Knowledge of offence to be declared.

SEC. 148. If a member of a grand jury has reason to believe that a public offence has been committed within the jurisdiction of the court, he must declare the same to his fellow jurors, who shall thereupon investigate the same.

Duty of grand jury.

SEC. 149. The grand jury must inquire into the case of every person imprisoned in the county jail and not indicted, into the condition and management of the public prisons within the county, and into wilful and corrupt misconduct in office of public officers, of every description, within the county; and, for such purpose, they are entitled to free access, at all reasonable times, to all public buildings, public offices, and public records.

True bill.

SEC. 150. No indictment can be found without the concurrence of at least twelve grand jurors; where so found, and not otherwise, the foreman of the grand jury shall endorse it thus: "A true bill" ————, "foreman."

No true bill.

SEC. 151. When there is not a concurrence of twelve grand jurors in finding an indictment, the foreman shall certify, under his hand, that no true bill was found.

Presentment

SEC. 152. Indictments found by a grand jury shall be presented by their foreman, in their presence, to the court, and shall be filed and remain as records of such court.

Indictment for trespass.

SEC. 153. No indictment for any trespass against the person or property of another, not amounting to a felony, or for the first offence of petit larceny, shall be preferred, unless the name of a prosecutor is endorsed thereon, except when the same is preferred upon the information or knowledge of two or more of the grand jurors, or on the information of some public officer in the necessary discharge of his duty, in which case a statement of the fact shall be made at the end of the indictment, and signed by the foreman of the grand jury.

Name of prosecutor to be endorsed.

SEC. 154. The name of the prosecutor shall be endorsed as such, by himself, or, when his name has been certified as prosecutor, with the examination as provided by law, the endorsement may be made by the attorney prosecuting; but no indictment shall be quashed for want of such endorsement, if the same shall be made before the motion to quash is disposed of.

One presentment

SEC. 155. It shall not be necessary for any grand jury to present any presentment prior to the presentation of the indictment.

Bill to be signed by attorney and endorsed by foreman.

SEC. 156. Each indictment must be signed by the attorney prosecuting; and when the grand jury return any indictment into court, the judge must examine it; and if the foreman has neglected to endorse it "A true bill," with his name signed thereto, or if the attorney prosecuting has neglected to sign his name, the court must cause the foreman to endorse, or the attorney prosecuting to sign it, as the case may require, in the presence of the grand jury.

Names of witnesses to be endorsed.

SEC. 157. When an indictment is presented by the grand jury, the names of all material witnesses must be endorsed upon the indictment; but other witnesses may afterward be subpœnaed by the territory; but unless the names of such witnesses be endorsed on the indictment, no continuance shall be granted to the territory on account of the absence of any witness whose name is not endorsed thereon.

Warrant.

SEC. 158. Immediately after an indictment has has been filed with the clerk of the court, when the defendant has not been held to answer any offence in said court, it shall be the duty of the clerk to issue to the sheriff of said county a warrant for the arrest of such defendant, commanding him to bring the defendant forthwith before the court, unless otherwise ordered.

Endorsement of bail.

SEC. 159. If the court deem it proper, and the offence is bailable, he may endorse on the back of the warrant the amount in which the defendant is to be held, or admitted to bail, pending the action; or he may order the clerk to enter the amount in which the defendant shall be admitted to bail in the minutes of the court, and then the clerk shall endorse the amount on the warrant of arrest.

Clerk may fix bail.

SEC. 160. When the court or judge has failed to fix the amount of bail, and the judge is absent from the county, the clerk of the court may fix the same.

CHAPTER VIII.

THE INDICTMENT.

Sec. 161. All prosecutions in name of the territory.
Sec. 162. Forms of pleading prescribed.
Sec. 163. Indictment, only pleading on part of territory.
Sec. 164. Indictment—what it must contain.
Sec. 165. Indictment—must be certain.
Sec. 166. What sufficient to allege as to time.
Sec. 167. What sufficient name of owners of property.
Sec. 168. Words used in indictment—how construed.
Sec. 169. Words used in statute, etc.
Sec. 170. Sufficiency of indictment.
Sec. 171. Defects for which indictment shall not be quashed.
Sec. 172. Presumptions of law, etc., not stated.
Sec. 173. How judgment pleaded.
Sec. 174. How private statute pleaded.
Sec. 175. One or more defendants convicted or acquitted.
Sec. 176. Aider or abetter tried as principal.
Sec. 177. Accessory after fact tried and punished.
Sec. 178. Indictment recorded by clerk and compared by judge. Defendant may be tried on copy—when.
Sec. 179. In case of loss or destruction of indictment.
Sec. 180. Inspection of indictment not allowed—when.
Sec. 181. Fact that indictment is found not to be disclosed, until after arrest made.
Sec. 182. Jury may find defendant guilty of less crime than charged when offence consists of different degrees.
Sec. 183. In all other cases, etc.
Sec. 184. Counts for murder and manslaughter may be joined, and defendant found guilty of either.
Sec. 185. Sufficiency of allegation of offence against property of several owners.

Sec. 186. Where indictment against accessory is found.
Sec. 187. When defendant is indicted by fictitious or wrong name.
Sec. 188. Indictment shall contain but one offence.
Sec. 189. In case of private injury, what allegation material.
Sec. 190. Indictment for libel—what sufficient.
Sec. 191. When misdescription of instrument in case of forgery immaterial.
Sec. 192. Indictment for perjury—sufficiency of.

Territory plaintiff

SEC. 161. All criminal prosecutions must be in the name of the Territory of Montana.

Pleadings.

SEC. 162. The forms of pleading in criminal actions in the district court, and the rules by which the sufficiency of pleading is to be determined, are those herein prescribed.

Indictment.

SEC. 163. The only pleading on the part of the territory is the indictment.

Contents of indictment

SEC. 164. The indictment must contain:

First. The title of the action specifying the name of the court to which the indictment is presented, and the names of the parties.

Second. A statement of the facts constituting the offence, in plain and concise language, without unnecessary repetition.

Same.

SEC. 165. The indictment must be direct and certain, as it regards the party and the offence charged.

Same.

SEC. 166. The precise time of the commission of an offence need not be stated in the indictment, but it is sufficient, if it is shown to have been before the finding of the indictment and within the statute of limitations, except where time is an indispensable ingredient of the offence.

Same

SEC. 167. In an indictment for an offence committed in relation to property, it is sufficient to state the name of any one, or names of several joint owners.

Construction of words

SEC. 168. The words used in an indictment must be construed in their usual acceptation in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

Same.

SEC. 169. Words used in the statute to define a public offence need not be strictly pursued, but other words conveying the same meaning may be used.

Sufficient indictment.

SEC. 170. The indictment shall be sufficient if it can be understood therefrom:

First. That the indictment was found by the grand jury of the county in which the court is held.

Second. That the defendant is named or described in an indictment as a person whose name is unknown to the grand jurors.

Third. That the offence was committed within the jurisdiction of the court, or is triable therein.

Fourth. That the offence charged is clearly set forth in plain and concise language, without repetition: and

Fifth. That the offence charged is stated with such a degree of certainty that the court may pronounce judgment, upon conviction, according to the right of the case.

Same

SEC. 171. No indictment shall be quashed or set aside for any of the following defects:

First. For a mistake in the name of the court or county, or in the title thereof.

Second. For the want of an allegation of the time and place of any material fact, when the venue and time have once been stated in the indictment.

Third. That the dates and numbers are represented by figures.

Fourth. For an omission of any of the following allegations, viz.: with force and arms, contrary to the form of the statute, or against the peace and dignity of the Territory of Montana.

Fifth. For an omission to allege that the grand jurors were impanelled, sworn, or charged.

Sixth. For any surplusage or repugnant allegation, when there is sufficient matter alleged to indicate the crime and person charged. Nor,

Seventh. For any other defect or imperfection which does not tend to the prejudice of the substantial rights of the defendant, upon the merits.

Unnecessary statements.

SEC. 172. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in the indictment.

Sufficient statement

SEC. 173. In pleading a judgment or other determination of a court or officer of special jurisdiction, it is sufficient to allege, generally, that the judgment or determination was duly made, or had before such court or officer; but the facts constituting the jurisdiction must be established on the trial.

Same.

SEC. 174. In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title, and the day of its approval; and the court shall take notice thereof.

Joint defendants.

SEC. 175. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

Accessory.

SEC. 176. Any person who counsels, aids or abets in the commission of any offence, may be charged, tried, and convicted, in the same manner as if he were a principal.

Same

SEC. 177. An accessory after the fact, to the commission of a felony, may be indicted, tried, and punished; though the principal be neither indicted nor tried.

Record of indictment

SEC. 178. Every indictment must be recorded by the clerk, during the term at which the same is found, in a book to be kept for that purpose. The judge must compare the record with the original indictments, and certify the correctness thereof. In case the original indictment be lost or destroyed, the defendant may be tried upon a copy taken from the record, and certified by the clerk, during the term at which the same is found, in a book to be kept for that purpose. The judge must compare the record with the original indictments, and certify the correctness thereof. In case the original indictment be lost or destroyed, the defendant may be tried upon a copy taken from the record, and certified by the clerk, without any delay from that cause.

Lost indictment

SEC. 179. In case of the loss or destruction of an indictment, the attorney prosecuting may file in court another indictment, similar to the original, certified to by the clerk of the court; and the prosecution shall proceed, and the trial be had without any delay from that cause.

Indictment against person at large

SEC. 180. Indictments against persons not in custody, or who have not given bail, and the records of such indictments shall be in the custody of the clerk, cannot be inspected by any person, except the court, the clerk, and his deputy, and the attorney prosecuting, until after the arrest of the defendant.

No disclosure prior to arrest.

SEC. 181. No grand juror, attorney prosecuting, clerk, judge, or other officer shall disclose the fact that an indictment is found, until the defendant has been arrested, except any disclosure that may be necessarily incident to the issue and service of a warrant to arrest the defendant. A violation of this and the next preceding section may be punished as a misdemeanor by fine or imprisonment, or both.

Conviction for offence smaller than charged.

SEC. 182. Upon an indictment for an offence consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment, and guilty of any degree inferior thereto, or of an attempt to commit the offence.

Same.

SEC. 183. In all other cases, the defendant may be found guilty of an offence, the commission of which is necessarily included in that with which he is charged in the indictment.

What counts may be joined.

SEC. 184. Counts for murder in the first and second degrees; and for manslaughter, may be joined in the same indictment, and on the trial the defendant may be convicted of either offence.

Sufficient allegation

SEC. 185. When any offence shall be committed upon, or in relation to, any personal property belonging to several partners, or owners, the indictment for such offence shall be deemed sufficient, if it allege such property to belong to any one or more of such partners or owners without naming them all.

Indictment against accessory.

SEC. 186. An indictment against any accessory to any felony may be found in any county where the offence of such accessory shall have been committed, notwithstanding the principal offence may have been committed in another county, and the like proceeding shall be had therein in all respects, as if the principal offence had been committed in the same county.

True name of defendant.

SEC. 187. When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it shall be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name given in the indictment.

One offence to be charged.

SEC. 188. The indictment shall charge but one offence; but it may set forth such offence in different counts.

Immaterial allegation

SEC. 189. When an offence involves the commission, or an attempt to commit a private injury, and is described with sufficient certainty in other respects, to identify the act, an erroneous allegation as to the person injured, or intended to be injured, shall not be deemed material.

Indictment for libel.

SEC. 190. An indictment for libel need not set forth any extrinsic facts, for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment is founded, but it shall be sufficient to state generally, that the same was published concerning him, and the fact that it was so published must be established on the trial.

Indictment for forgery.

SEC. 191. When an instrument, which is the subject of an indictment for forgery, has been destroyed or withheld by the act of procurement of the defendant, and the fact of such destruction, or withholding, is alleged in the indictment, and established on the trial, the misdescription of the instrument shall be deemed immaterial.

Indictment for perjury.

SEC. 192. In an indictment for perjury, or subornation of perjury, it shall be sufficient to set forth the substance of the controversy or matter in respect to which the offence was committed, and in what court, or before whom, the oath alleged to be false was taken; and that the court or person before whom it was taken had authority to administer the same, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record or proceedings with which the oath is commenced, nor the commission or the authority of the court or person before whom the perjury was committed.

CHAPTER IX.

ARRAIGNMENT AND PLEADING ON THE PART OF THE DEFENDANT.

Sec. 193. If defendant in custody and indicted, to be arraigned.
Sec. 194. If defendant on bail, to appear.
Sec. 195. If defendant not in custody, to be arraigned when arrested.
Sec. 196. If without counsel, court to appoint.
Sec. 197. Compensation of counsel.
Sec. 198. Arraignment—manner of.
Sec. 199. If defendant, when arraigned, refuse to plead, plea of not guilty entered, etc.
Sec. 200. If indictment be for felony, defendant must be present; if for misdemeanor, may appear by counsel.
Sec. 201. Defendant to be informed of name under which he was indicted.
Sec. 202. If he give no other name, court to proceed.
Sec. 203. If he give another name, court to direct, etc.
Sec. 204. Time allowed to answer indictment.
Sec. 205. Of motions and pleadings to an indictment.

Sec. 206. Causes for which indictment may be set aside.
Sec. 207. When defendant not held to answer before indictment filed—grounds to set aside, etc.
Sec. 208. Motion to set aside—what must be, and when made.
Sec. 209. If motion denied, defendant must demur, or plead.
Sec. 210. If motion allowed, proceeding.
Sec. 211. If case resubmitted, defendant continues answerable.
Sec. 212. When defendant may demur to indictment.
Sec. 213. Demurrer, what to contain, etc.
Sec. 214. When demurrer sustained—effect of.
Sec. 215. If case not resubmitted, defendant discharged.
Sec. 216. If demurrer overruled, defendant must plead.
Sec. 217. Defects—what are waived, if no demurrer.
Sec. 218. Pleas to indictment—what may be.
Sec. 219. Pleas must be oral.
Sec. 220. In cases of felony, defendant to appear in person.
Sec. 221. Defendant may withdraw one plea and submit another.
Sec. 222. Plea of not guilty—the general issue.
Sec. 223. Formal acquittal in certain cases—effect of.
Sec. 224. Acquittal on merits—effect of.
Sec. 225. Conviction or acquittal, a bar.

Arraignment.

SEC. 193. If a defendant is in custody at the time of the finding of the indictment, the court shall order the person holding him to produce him in court, for the purpose of being arraigned.

Same.

SEC. 194. If the defendant has been discharged on bail, he must appear within twenty-four hours after the filing of the indictment, for the purpose of arraignment, or his recognizance shall be forfeited.

Same.

SEC. 195. If the defendant is not in custody at the time of filing the indictment, then as soon as he is produced in court, or at such time as he may be recognized to appear therein, he shall be arraigned.

Defendant to have counsel.

SEC. 196. If any person about to be arraigned upon an indictment for felony, be without counsel to conduct his defence, and he be unable to employ any, it shall be the duty of the court to assign him counsel, at his request, not exceeding two, who shall have free access to the prisoner at all reasonable hours.

12th ses p. 12.

Compensation to counsel

SEC. 197. Whenever, in a criminal action or proceeding, in the district court, any attorney at law shall defend a person charged with any offence, by order of the court, on the ground that the accused is unable to procure or employ counsel for himself, the county in which such criminal action or proceeding may have arisen, shall be liable to pay such attorney for his services such sum as the court, in which such services shall be performed, shall certify to be a reasonable compensation therefor, not to exceed, in any capital case the sum of fifty dollars; in other cases of felony a sum not exceeding twenty-five dollars; and in all other cases a sum not exceeding ten dollars.

NOTE—Section 197 from act of Feb 23d. 1881.

Defendant, how arraigned

SEC. 198. The defendant shall be arraigned by reading the indictment to him in open court, unless such arraignment be waived; and such arraignment, or waiving thereof, shall be noted in the minutes of the court.

If defendant refuses to plead

SEC. 199. When any person shall be arraigned upon any indictment, and refuse to deny the charge in any form, or confess the same, a plea of *not guilty* shall be entered, and the same proceedings shall be had, in all respects, as if he had formally pleaded not guilty to such indictment.

Defendant, when must be present

SEC. 200. If the indictment be for a felony, the defendant must be present in person; but if for a misdemeanor, his personal presence is not necessary, and he may appear, be arraigned, and plead by counsel.

Name of defendant

SEC. 201. When the defendant is arraigned, he shall be informed, that if the name by which he is indicted be not his true name, he must declare his true name, or be prosecuted by the name in the indictment.

Same

SEC. 202. If he give no other name, the court may proceed accordingly.

Same

SEC. 203. If he allege that another name is his true name, the court shall direct an entry thereof, in its minutes, and all subsequent proceedings on the indictment may be had against him by that name, referring, also, to the name by which he was indicted.

Time to answer

SEC. 204. If, on the arraignment, the defendant require it, he shall be allowed until the next day, or such further time as the court may allow, to answer the indictment.

Demurrer, etc

SEC. 205. At the time the defendant shall be required to answer the indictment, he may move to set the same aside, or he may demur or plead thereto.

When indictment may be set aside.

SEC. 206. The indictment shall be set aside by the court in which the defendant is arraigned, upon his motion, in either of the following cases:

First. When it is not found endorsed, or has not been presented as prescribed by this act.

Second. Where the names of the material witnesses examined before the grand jury are not inserted at the foot of the indictment, or endorsed thereon.

Third. When any person has been permitted to be present during the session of the grand jury, while the charge embraced in the indictment was under consideration, except those allowed by law.

Motion to set aside indictment

SEC. 207. When the defendant has not been held to answer before the finding of the indictment, he may move to set it aside, on any ground which would have been a good cause of challenging either the entire panel of the grand jury, or any individual grand juror, under either the first, second, third, or fourth grounds of challenge to such jurors.

Same.

SEC. 208. The motion to set aside the indictment must be in writing, subscribed by the party defendant, or his attorney, and must specify clearly the ground of objection to the indictment. If such motion is not made before the defendant demurs or pleads, the grounds of objection to the indictment, which might be made in such manner, shall be deemed waived.

Same

SEC. 209. If the motion is denied, the defendant must immediately demur, or plead to the indictment

Same.

SEC. 210. If the motion be granted, the court shall order that the defendant, if in custody, be discharged therefrom; or if admitted to bail, his bail must be exonerated; or if he has deposited money instead of bail, that the same be refunded to him, unless it direct that the case be re-submitted to the same or another grand jury.

If case resubmitted defendant to remain in custody or on bail.

SEC. 211. If the court direct that the case be resubmitted, the defendant, if already in custody, shall so remain, unless he be admitted to bail; or if already admitted to bail or money has been deposited instead thereof, the bail or money shall be answerable for the appearance of the defendant to answer a new indictment.

Demurrer to indictment.

SEC. 212. The defendant may demur to the indictment when it shall appear upon the face thereof:

First. That the grand jury by which it was found had no legal authority to inquire into the offence charged, by reason of its not being within the jurisdiction of the court.

14th ses p 73

Second. The acts constituting the offence are stated in an indefinite, ambiguous, and uncertain manner.

Third. That more than one offence has been charged in the indictment.

Fourth. That the facts stated do not constitute a public offence.

Fifth That the indictment states matter which, if true, constitutes a legal justification for the offence charged, or a bar to the prosecution.

NOTE—Second paragraph of section 212 is act of March 10, 1885

Same

SEC. 213. The demurrer must be in writing, signed by either the defendant or his counsel, and filed with the clerk of the court. It must distinctly specify the grounds of objection to the indictment, or it will be disregarded.

Same

SEC. 214. If the demurrer be sustained, the judgment shall be final upon the indictment demurred to; and shall be a bar to another prosecution for the same offence, if the demurrer be sustained for the fifth cause. When a demurrer is sustained for any other cause, the case shall be referred to the same or another grand jury, unless, for good cause, the court direct otherwise.

Status of defendant if case is or is not resubmitted

SEC 215. When a case is resubmitted to the same or another grand jury, the defendant, if in custody, shall be detained therein until he gives bail; or if at large upon bail, the recognizance shall be answerable for his appearance to answer a new indictment. If not resubmitted, he shall be discharged, and his bail exonerated.

Defendant's plea

SEC. 216. If the demurrer be overruled, the defendant must plead to the indictment, within such time as the court may allow.

What is waived by failure to demur.

SEC. 217. A defendant who has failed to demur to an indictment, for any of the defects appearing upon its face, shall be deemed to have waived the same, except the defects that the court has no jurisdiction over the same, or that the indictment does not state facts sufficient to constitute an offence;—these he may take advantage of on the trial, or on motion to arrest judgment.

Three kinds of pleas.

SEC. 218. There may be three kinds of pleas to an indictment: A plea of

First. Guilty.

Second. Not guilty.

Third. A former judgment of conviction or acquittal of the offence charged, which may be pleaded with, or without, the plea of not guilty.

Plea must be oral

SEC. 219. Every plea must be oral, and must be entered upon the minutes of the court.

Appearance in felony

SEC. 220. In all cases of felony, the defendant must appear in court personally, and make his plea to the indictment.

Plea may be withdrawn.

SEC. 221. The court may, at any time before judgment permit the defendant to withdraw any plea he has made, and substitute another therefor.

What plea of not guilty denies.

SEC. 222. The plea of not guilty shall be deemed a denial of every material allegation in the indictment

Aquittal, effect of.

SEC. 223. If the defendant is formally acquitted, on the ground of a variance between the indictment and the proof, or upon an objection to the form or substance of the indictment, it shall not be deemed an acquittal of the same offence.

Same

SEC. 224. When a defendant shall have been acquitted on the merits, he shall be acquitted on the same offence, notwithstanding any defect of form or substance in the indictment on which he was acquitted

Bar

SEC. 225. When the defendant shall have been convicted or acquitted upon an indictment, the conviction or acquittal shall be a bar to another indictment, for the offence charged in the indictment, or for any offence necessarily included therein, of which he might have been convicted under that indictment.

CHAPTER X.

CHANGE OF VENUE.

Sec. 226. *Change of venue—when granted to defendant.*
Sec. 227. *Duty of court when change granted.*
Sec. 228. *Territory entitled to change—when*
Sec. 229. *Application for change on part of territory, how and by whom made.*
Sec. 230. *Changes of venue not granted—when*
Sec. 231. *If change granted in vacation, duty of court.*

Sec. 232. If conviction after change and imprisonment be part of judgment, prisoner returned.
Sec. 233. Questions waived by verdict.
Sec. 234. As to notice if change in term time; notice in other cases.
Sec. 235. Penalty on neglect of clerk relating to change.
Sec. 236. If several defendants and cause of change exist as to part; others tried.

Change of venue when granted.

SEC. 226. Any defendant, in any indictment or information may be awarded a change of venue upon a petition setting forth that he has reason to believe that he will not receive a fair trial in the court in which such indictment or information may be pending, on account that the judge is interested or prejudiced, or is of kin to, or shall have been counsel for either party, or that the prosecutor has an undue influence over the minds of the inhabitants of the county, where the indictment or information shall be pending, or that the inhabitants of the county are prejudiced against the applicant, so that he cannot expect a fair trial; such party may apply to the court in term time, or to the judge in vacation, by petition, setting forth the cause of the application, and praying a change of venue; and such judge or court, being satisfied that such cause exists, the facts stated in such petition being verified by the oath of the applicant, or some credible person, and reasonable notice having been given to the district attorney, may award a change of venue to some county where the causes complained of do not exist. And in all such cases, where the judge is interested, or of kin, or shall have been of counsel in the case, the court may, in term time, award a change of venue in its discretion: *Provided*, That there shall be but one change of venue allowed.

If venue changed body of prisoner to be removed

SEC. 227. If the applicant is in custody, or confined in jail, the court or judge shall make an order to the sheriff to remove the body of such applicant to the jail of the county, if there be a jail in such county to which the change of venue shall have been made, and there deliver him to the keeper of such jail, together with the warrant, by virtue of which he is confined or held in custody, at least three days next before the first day of the term of said court. The sheriff shall deliver such warrant, with the body of such prisoner, to the jailer of the proper county, who shall receive the same, and give the sheriff a receipt therefor, and shall take and keep the prisoner in the same manner as if he had been originally committed to his custody. No change of venue shall be allowed until after indictment is found.

Change of venue for territory.

SEC. 228. The territory may have a change of venue for any of the causes affecting it for which the defendant may obtain the same, and also, for the reason that it is impossible to obtain a jury in any county, who have not formed an opinion as to the guilt or innocence of the defendant, which would disqualify them as jurors.

Same.

SEC. 229. When it is necessary for the territory to obtain a change of venue, the district attorney, or some one cognizant of the fact, shall make the necessary affidavit; and the district attorney shall make the necessary application.

When change of venue not granted.

SEC. 230. Changes of venue shall not be granted after the first term at which the party applying for the same might have been heard, unless the cause shall have arisen subsequent to such term.

Transfer of papers.

SEC. 231. When a change of venue shall be granted, in the term or vacation, the judge shall immediately transmit to the clerk of the court, wherein such indictment is pending, the petition and affidavit, together with an order in writing, directing the change on venue; and such clerk shall file the same in his office, and make a copy thereof, and a full transcript of the record and proceedings in such cause, together with a copy of the indictment, and all papers filed in the cause, and making a part ot the record and the recognizance of the party, and all witnesses; and the clerk of the court to which such cause shall be changed shall file the same, and the cause shall be docketed, and all proceedings had as if the cause had originated in said court. When the venue in any cause shall be changed, as aforesaid, the parties and witnesses who have entered into recognizance are hereby required, on notice of such change, to attend at the time and place of trial, to be had according to such change, and, on failure so to do, shall work a forfeiture of the recognizance.

Duty of parties and witnesses.

Transfer of defendant if convicted.

SEC. 232. When a change of venue is granted, and a conviction shall be had, and imprisonment shall be part of the judgment, the sheriff shall convey the prisoner at once to the county where the crime shall have been committed, and retain him in custody according to the judgment of the court. The costs and charges shall be paid by the county in which the crime was committed, if the defendant be unable to pay them.

Questions waived

SEC. 233. All questions concerning the regularity of proceedings, and the rights of the court to which the change is made to try the cause and execute judgment, shall be considered as waived after trial and verdict.

Notice in case of change.

SEC. 234. When the order of removal is made in term time, it shall be deemed a notice to every person who shall have entered into recognizance to appear at such term. In other cases, the notice shall be in writing, signed by the attorney prosecuting, or clerk of the court, and served on the person so recognized in the same manner as a subpœna is served.

Punishment of clerk for failure of duty.

SEC. 235. If any clerk of the district court shall neglect or refuse to perform any duty in relation to the removal of a cause, enjoined on him by the foregoing provisions, he shall forfeit and pay a sum not exceeding five hundred dollars, to be recovered by an action in the name of and for the use of the territory.

Change of venue as to part of defendants.

SEC. 236. When there are several defendants in any indictment, in a criminal prosecution, and the cause of the removal thereof exists only as to part of them, the other defendants shall be tried; and all proceedings had against them in the county in which the cause is pending, shall be in all respects as if no order of removal had been made as to any defendant.

CHAPTER XI.

BAIL.

Sec. 237. Admission to bail—what is.
Sec. 238. Bail, definition of.
Sec. 239. Accused admitted to bail—when.
Sec. 240. Power of magistrate to take bail.
Sec. 241. When admission to bail, matter of discretion, notice of application given to district attorney.
Sec. 242. Defendant admitted to bail on appeal in certain cases.
Sec. 243. Defendant admitted to bail before conviction in certain cases.
Sec. 244. How defendant admitted to bail on appeal.
Sec. 245. How bail is put in.
Sec. 246. Qualifications of bail.

Sec. 247. Bail to justify by affidavit.
Sec. 248. What officers may take recognizances.
Sec. 249. What done with recognizance.
Sec. 250. Defendant may deposit money instead of giving bail.
Sec. 251. Sheriff may take recognizance in certain cases.
Sec. 252. Of surety surrendering principal.
Sec. 253. How bail discharged after forfeiture of recognizance.
Sec. 254. Certified copy of recognizance delivered to sheriff.
Sec. 255. Defendant surrendered may give other bail.
Sec. 256. Unless defendant appear bail forfeited.
Sec. 257. Prosecuting attorney may proceed against bail.
Sec. 258. Defect of form, etc., not to defeat recognizance.
Sec. 259. Forfeited recognizance collectable after defendant arrested.
Sec. 260. Cause continued from time to time.
Sec. 261. When defendant arrested court to fix bail.
Sec. 262. Clerk to endorse on warrant.
Sec. 263. Money deposited in place of bail may be returned.
Sec. 264. Defendant admitted to bail may be rearrested.
Sec. 265. Order of recommittal—what to contain.
Sec. 266. Defendant arrested in any county.
Sec. 267. If defendant convicted must be committed.
Sec. 268. If offence bailable amount endorsed on order.
Sec. 269. Bail—by whom taken in such case.

Bail defined.

SEC. 237. Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon the taking of bail.

Taking bail.

SEC. 238. The taking of bail consists in the acceptance of a competent court, magistrate, or legally authorized officer, of the recognizance of a sufficient bond for the appearance of the defendant according to the terms of the recognizance, or that the obligor will pay the Territory of Montana a specified sum.

Admission to bail.

SEC. 239. A person charged with an offence may be admitted to bail before conviction as follows:

First. As a matter of discretion in all cases where the punishment is death, except where the proof is evident and the presumption great.

Second. As a matter of right in all other cases.

Power of magistrate

SEC. 240. Any magistrate who has held any defendant to answer a bailable offence, and any court or judge thereof, or in his absence, the clerk thereof, in which a defendant has been indicted, and any magistrate having the power to issue a writ of habeas corpus, when the defendant is brought before him thereon, shall have the power to make any order admitting the defendant to bail, fixing the amount thereof.

Notice to district attorney

SEC. 241. When the admission to bail is a matter of discretion, the court or officer by whom it may be ordered shall require such notice of the application therefor, as he may deem reasonable, to be given to the district attorney of the district where the examination is held.

Bail after conviction

SEC. 242. After the conviction of an offence not punishable with death, a defendant who has appealed may be admitted to bail:

First. As a matter of right, when the appeal is from a judgment imposing a fine only.

Second. As a matter of discretion, in all other cases.

Bail before conviction

SEC. 243. Before conviction, a defendant may be admitted to bail:

First. For his appearance before a magistrate on an examination of the charge before being held to answer.

Second. To appear at the court before which the magistrate is required to return the depositions and statement, together with the complaint and the orders thereon, upon the defendant being held to answer after examination.

Third. After indictment, either before the warrant has issued for the arrest of the defendant, or upon an order of court fixing or enlarging the amount of bail, or upon his being surrendered by his bail, to answer the indictment in the court in which it has been found, or to which it may be sent or removed for trial.

Bail on appeal

SEC. 244. After conviction, and on appeal, the defendant may be admitted to bail as follows:

First. If the appeal be from a judgment imposing a fine only, on the cognizance of bail that he will pay the same, or such part of it as the court may direct, if the judgment be affirmed or modified, or the appeal dismissed.

Second. If the judgment of imprisonment has been given, that he will surrender himself in execution of such judgment, upon its being affirmed or modified, or upon the appeal being dismissed.

Recognizance.

SEC. 245. Bail for the appearance of a defendant is put in by a written recognizance executed by two sufficient sureties, with or without the defendant, in the discretion of the officer taking the same.

Qualifications of bail.

SEC. 246. The qualifications of bail shall be as follows:

First. Each of them must be a resident and a householder, or freeholder, within the territory and the district where the bail is offered, within the direction of the officer taking the same.

Second. They must each be worth the amount specified in the recognizance in property within the territory, exclusive of property exempt from execution, over and above all other debts and liabilities. The officer taking the bail, however, may allow more than two bail to justify in amounts less than that expressed in the recognizance, if the whole justification be equivalent to that of two sufficient bail.

Bail shall justify

SEC. 247. The bail shall, in all cases, justify by affidavit taken before some legally authorized officer; the affidavit must state that they each possess the qualifications provided in the above section; the officer taking the bail may, in his discretion examine the sureties as to their property, the amount and nature of it, and where the same is at the time.

Who may take bail.

SEC. 248. Any officer authorized to execute a warrant in a criminal action, may take the recognizance and approve the bail. He may administer oaths and examine bail as to sufficiency.

Recognizance to be recorded.

SEC. 249. Every recognizance taken by any peace officer must be certified by him forthwith, to the clerk of the court to which the defendant is recognized. The clerk must thereupon record the recognizance in the order book, and from the time of filing it shall have the same effect as if taken in open court.

Deposit in lieu of bail.

SEC. 250. The defendant may, in place of giving bail, deposit with the clerk of the court to which the defendant is held to answer, the sum of money mentioned in the order, and upon delivering to the sheriff the certificate of deposit, he must be discharged from custody.

Sheriff may approve bail.

SEC. 251. When any person is committed for an offence, and the amount of bail is specified in the warrant of commitment, the sheriff may take the recognizance, and approve the bail.

SEC. 252. When a surety desires to surrender his principal, he may procure a copy of the recognizance from the clerk; by virtue of which, the bail, or any person authorized by him, may take the principal, in any county within the territory.

Surrender of defendant.

SEC. 253. The bail, at any time before final judgment against him, on a forfeiture of the recognizance, may surrender his principal in open court, or to the sheriff; and upon payment of all costs, may thereupon be discharged from all further liability upon the recognizance.

Same.

SEC. 254. The bail must deliver a certified copy of the recognizance to the sheriff, with the principal; and the sheriff must accept the surrender of the principal, and acknowledge it in writing.

Same

SEC. 255. Any defendant so surrendered may give other bail or remain in custody, until discharged in due course of law.

Other bail may be given.

SEC. 256. If, without sufficient excuse, the defendant neglect to appear for trial or judgment, or upon any other occasion, when his presence in court may be lawfully required according to the conditions of his recognizance, the court must direct the fact to be entered upon the minutes, and the recognizance of bail, or money deposited as bail, as the case may be, shall thereupon be forfeited.

Forfeiture of bail.

SEC. 257. The attorney prosecuting may, at any time after the adjournment of the court, proceed by action against the bail upon recognizance. Said action shall be governed by the rules of civil pleading, so far as applicable.

Action against bail

SEC. 258. No action upon a recognizance may be defeated for any defect of form, or any omission of recital, condition or undertaking therein, or neglect of the clerk to endorse or record it, but the sureties shall be bound thereby, to the full amount specified therein. A recognizance may be recorded after execution is awarded.

Same

SEC. 259. Any recognizance forfeited by the prisoner shall be collectable upon execution, although he be afterwards arrested on the original charge, unless remitted by the court for cause shown.

Bail collected if defendant rearrested.

SEC. 260. If any person indicted for a criminal offence, abscond or flee from justice, or cannot be found to be served with process; or being let to bail, shall not appear according to the condition of the recognizance, the cause may be continued from time to time without issuing process on the indictment; and such process may be issued at any time, upon the application of the attorney prosecuting.

Case continued against absconding defendant.

Order for bail

SEC. 261. Whenever any person is indicted for any bailable offence, it shall be the duty of the court at the time the indictment is presented and filed, to make an order, to be entered in the minutes, of the amount in which the defendant shall be admitted to bail, unless the court deem it best to indorse such order on the warrant.

Duty of clerk.

SEC. 262. When the order fixing the amount of bail is entered in the minutes, the clerk will indorse the same on the warrant of arrest.

Return of deposit.

SEC. 263. If any money has been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, shall surrender himself to the officer to whom the commitment was directed, upon the defendant giving the district attorney of the district five days' notice of his intention to apply for a return of the deposit, and, at the same time, serving a certificate of the officer to whom he has delivered himself of the fact, he shall be entitled to an order of the court, or the judge thereof, if the court is not in session, that the deposit be returned to him.

Re-arrest of defendant.

SEC. 264. The court to which the committing magistrate held the defendant to answer, or in which an indictment or an appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order to be entered in its minutes, direct the re-arrest of the defendant, and his commitment to the officer to whose custody he had been committed at the time of giving bail, in the following cases:

First. When by reason of his failure to appear, he has incurred a forfeiture of his bail, or the money deposited instead thereof.

Second. When it satisfactorily appears to the court that his bail, or either of them, are dead or insufficient, or removed from the territory.

Third. When a defendant has been held to answer a criminal charge, and has been admitted to bail, and thereafter is indicted for a felony, the court in which the indictment is presented may order the defendant to be committed to actual custody, unless he give bail in an increased amount, to be specified in the order.

Fourth. That upon the trial of any person charged with a felony, the court, in its discretion, at any time after the jury shall have been sworn to try the same, may order the defendant into custody of the sheriff until the final determination of the same; notwithstanding such defendant may have given bail to answer such charge.

NOTE—The last clause of above section is from Act of May 8, 1873.

Order for recommitment.

SEC. 265. The order for the recommitment of the defendant shall recite generally the facts upon which it is founded, and shall direct that the defendant be arrested by any sheriff, constable, marshal, or policeman within this territory, and committed to the sheriff of the county where the case is pending or the conviction had, as the case may be, to be detained until legally discharged.

Arrest on order same as on warrant.

SEC. 266. The defendant may be arrested pursuant to this order, or upon a certified copy thereof, in any county in the territory, in the same manner as upon warrants of arrest.

Commitment of defendant

SEC. 267. If the order recite as the grounds upon which it is made, the failure of the defendant to appear for judgment, upon conviction, the defendant must be committed according to the requirements of the order.

Bail

SEC 268. If the order be for any other cause, and the offence be bailable, the court must fix the amount of bail by an indorsement on the order, and may recite the order that the defendant be admitted to bail in such sum.

Who may take bail

SEC. 269. In such cases, bail may be taken by any one legally authorized to take bail.

CHAPTER XII.

TRIAL AND INCIDENTS CONNECTED THEREWITH.

Sec. 270. As to notice for continuance.
Sec. 271. Continuance granted—when.
Sec. 272. Territory may obtain continuance.
Sec. 273. As to continuance after defendant has pleaded.
Sec. 274. If cause not continued, set for trial.
Sec. 275. Time allowed defendant to prepare for trial.
Sec. 276. Misdemeanor may be tried by court on consent.
Sec. 277. Trial juror—qualifications of.
Sec. 278. Challenges allowed defendant.
Sec. 279. Challenges allowed territory.
Sec. 280. As to juror if offence punishable with death.
Sec. 281. Belief that punishment too severe disqualifies juror.
Sec. 282. Persons of kin to prosecutor or defendant, disqualified.
Sec. 283. Trial juries—how formed.

Sec. 284. Challenge may be interposed.
Sec. 285. Challenge to the panel.
Sec. 286. Challenge to panel—how made.
Sec. 287. Challenge to individual juror—causes for.
Sec. 288. Causes of challenge tried by court.
Sec. 289. Witnesses on trial of challenge may be produced.
Sec. 290. When challenges interposed.
Sec. 291. Juror excused after sworn; panel—how filled.
Sec. 292. Trial on indictment for felony.
Sec. 293. Of the proceedings on trial.
Sec. 294. Of the attendance of witnesses and their examination.
Sec. 295. In trials for treason.
Sec. 296. In trials for conspiracy.
Sec. 297. Proof on indictment for rape.
Sec. 298. Proof of existence of a corporation.
Sec. 299. Injured party not disqualified as witness.
Sec. 300. Of experts as witnesses.
Sec. 301. Gaming—competent witnesses.
Sec. 302. As to separate trials of defendants jointly indicted.
Sec. 303. Person indicted remaining in jail after second term to be discharged; exception.
Sec. 304. Persons indicted and on bail, not tried by end of their term, discharged; exception.
Sec. 305. Application for discharge under last two sections.
Sec. 306. How indictment nolle prosequied.
Sec. 307. Order of procedure on trial.
Sec. 308. As to reasonable doubt.
Sec. 309. Discharging of defendant to give evidence.
Sec. 310. Mistake in charging offence.
Sec. 311. When defendant prosecuted in wrong county.
Sec. 312. When jury discharged under last two sections.
Sec. 313. Conviction or acquittal; extent of bar.
Sec. 314. If a juror has personal knowledge material, etc.
Sec. 315. Separation of the jury.
Sec. 316. As to jury after cause submitted.
Sec. 317. Accomplice; testimony of.

Sec. 318. Jury may be discharged—when.
Sec. 319. When it appears offence committed in another district.
Sec. 320. Defendant discharged if no warrant produced.
Sec. 321. Certified copy of indictment, etc., transmitted.
Sec. 322. Jury may view place where material fact occurred.
Sec. 323. Jury allowed to separate—when.
Sec. 324. If jury kept together, to be boarded and lodged.
Sec. 325. If juror become sick.
Sec. 326. Duty of court in charging jury.
Sec. 327. Either party may present written charges.
Sec. 328. Exceptions to ruling of court.
Sec. 329. Suitable room provided for jury.
Sec. 330. Jury may be further instructed.
Sec. 331. Jury may be discharged if cannot agree, etc.
Sec. 332. When defendant tried again.
Sec. 333. While jury absent court to continue open.
Sec. 334. When jury have agreed, proceeding.
Sec. 335. Jury may be polled.
Sec. 336. When jury polled, duty of juror.
Sec. 337. If defendant not guilty, discharged; if verdict guilty, committed.
Sec. 338. If defendant committed, bail exonerated or money refunded.
Sec. 339. Exceptions by defendant on trial.
Sec. 340. Exceptions by territory on trial.
Sec. 341. If cause appealed by territory and new trial granted.
Sec. 342. Where different degrees contained in offence, jury shall specify the degree on conviction.
Sec. 343. Jury to find value of property.
Sec. 344. If jury have discretion, may assess punishment.
Sec. 345. If jury do not assess, court may do so.
Sec. 346. If jury assess below limit, court shall render judgment.
Sec. 347. If jury exceed limit, court shall render judgment.
Sec. 348. Court may reduce punishment.

Notice and affidavit for continuance.

SEC. 270. At the time the defendant makes his plea to the indictment he must notify the court of his desire, if he have any, for a continuance of his cause to some particular day, or for the term; and if he desires any continuance, he must file his affidavit, showing good cause therefor, within such time as the court may grant.

Continuance for cause

SEC. 271. For good cause shown, the court may grant a continuance for any number of days, or for the term; any cause which would be considered a good one for a continuance in a civil case, shall be considered sufficient in a criminal action.

Territory may have continuance.

SEC. 272. The territory may obtain a continuance for the same reasons, and must give the same notice therefor as the defendant, and be subject to the same restrictions; the district attorney, or any one acquainted with the facts, may make the proper affidavit.

Effect of failure to give notice

SEC. 273. If neither the defendant or the territory notify the court at the time the defendant pleads of a desire for a continuance, neither shall be entitled to make the application thereafter for any cause which existed at that time, and of which the party making the application had knowledge, or could have had knowledge; any application made after that time must be for a cause which arose, or had come to the knowledge of the applicant, since the making of the plea.

Case to be set for trial.

SEC. 274. If the cause is not continued, it shall be set down for trial on some certain day, in the order in which it appears on the docket, unless by consent it is set down for trial out of its order.

Two days to prepare

SEC. 275. If the defendant, however, desire, he shall have two days after he makes his plea in which to prepare for trial.

Trial to court or jury

SEC. 276. In any indictments for a misdemeanor, by the consent of defendant or his counsel and the district attorney, the issue may be submitted to the court; but in all other cases the issue must be submitted to a jury.

Qualifications of juror.

SEC. 277. The qualifications of a trial juror in criminal actions must be the same as in civil cases, according to the laws of this territory.

Peremptory challenges.

SEC. 278. The defendant, in every indictment for a criminal offence, shall be entitled to a peremptory challenge of jurors in the following cases, and to the numbers as follows:

First. If the offence charged be punishable with death, or by imprisonment not less than for life, challenges to the number of ten, and no more.

Second. If the offence be punishable with like imprisonment, not less than a specified number of years, and no limit to the duration of such imprisonment is declared, to the number of eight, and no more.

Third In any other case punishable with imprisonment in the penitentiary, to the number of six, and no more.

Fourth. In cases not punishable with death or imprisonment in the penitentiary, to the number of four, and no more.

Same

SEC. 279. In all criminal trials the territory may challenge half the number of jurors allowed the defendant by the preceding section.

Juror in capital case.

SEC. 280. If the offence charged be punishable with death, any person entertaining such conscientious opinions as would preclude his finding the defendant guilty shall not serve as a juror.

Juror in other cases

SEC. 281. No person who believes that the punishment fixed by law to be too severe for the offence, or entertains any opinion that would preclude his finding the defendant guilty, shall be sworn as a juror.

Same

SEC. 282. When any indictment alleges the offence against the person or property of another, neither the injured party nor any person of kin to him shall be a competent juror on the trial of such indictment; nor shall any person of kin to the prosecutor or defendant in any case serve as a juror on the trial thereof.

Formation of jury

SEC. 283. Trial juries for criminal actions shall be formed in the same manner as trial juries for civil actions.

Challenges.

SEC. 284. Either party may interpose a challenge:

First. To the panel.

Second. To an individual juror for a sufficient cause.

Challenge to panel

SEC. 285. A challenge to the panel may be interposed for the following causes: That there has been a material departure from the provisions of law in drawing and summoning the jury.

Written challenge

SEC. 286. All challenges to the panel must be made in writing, specifying the particular ground of challenge; and this must be done before the jury is sworn.

12th ses. p 54

Challenge to juror.

SEC. 287. A challenge to an individual juror may be for one of the following causes:

First. A conviction of felony, when the juror has not been fully restored to the rights and privileges of a citizen by pardon.

Second. A want of any of the qualifications prescribed by statute for a juror.

Third. Unsoundness of mind, or such a defect in the faculties of the mind or the organs of the body as renders him incapable of performing the duties of a juror.

Fourth. Consanguinity or affinity within the fourth degree, to the person alleged to be injured by the offence charged, or on whose complaint the prosecution was instituted, or to the defendant.

Fifth. Standing in the relation of guardian and ward, master and servant, or landlord and tenant; being a member of the family of the defendant, or of the person alleged to be injured by the offence charged, or on whose complaint the prosecution was instituted, or in the employ of either of them or the defendant on wages.

Sixth. Being a party adverse to the defendant in a civil action, or having complained against, or being accused by him in a criminal action.

Seventh. Having served on the grand jury which found the indictment.

Eighth. Having served on a trial jury which has tried another person who was charged with the same offence, in the same indictment as the defendant.

Ninth. Having been one of a jury formerly sworn on a trial jury to try the same indictment, which was discharged without a verdict after the case was submitted to it.

Tenth. Having served on a jury in a civil action brought against the defendant for the act charged as an offence.

Eleventh. Having formed or expressed an opinion as to the guilt or innocence of the accused; but if a juror state that he has formed or expressed an opinion as to the guilt or innocence of the accused, the court shall thereupon proceed to examine such juror as to the ground of such opinion, and if it appear to have been founded upon reading newspaper statements, communications, comments or reports, or upon rumor or hearsay, and not upon conversations with witnesses of the transaction, or reading reports of their testimony, or hearing them testify, and the juror state, on oath, that he feels able, notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that he is impartial, and will render such verdict, may, in its discretion, admit him as competent to serve in such case.

Twelfth. That a juror is a material witness for either party, or has been a material witness on a former trial of the issue.

Thirteenth. The existence of a state of mind in the juror evincing enmity against, or bias to, either party.

NOTE—Sec 287 act of Feb 23, 1881

Trial of challenges

SEC. 288. The court shall try all challenges, whether for actual or implied bias.

Same.

SEC. 289. Witnesses may be introduced by either party in support of any challenge for bias, when the juror challenged denies the same.

Challenge when interposed

SEC. 290. All challenges must be interposed before the jury is sworn; unless the cause of challenge be discovered after the jury is sworn and before the introduction of any evidence, when the court, in its discretion, may allow the challenge to be interposed.

Challenge after jury is sworn

SEC. 291. Whenever a juror is excused from the jury, after it is sworn, upon challenge of either party, the panel shall be filled in the same manner as before the swearing of the jury.

Presence of defendant at trial

SEC. 292. No person indicted for a felony can be tried unless he be personally present during the trial; nor can any person indicted for any other offence be tried unless he be present, or some responsible person shall have executed an undertaking to pay any fine and the costs that may be adjudged against the defendant in such action. Every person indicted shall be admitted to make lawful proof, by competent witnesses, or other testimony in his defence.

Law in civil case to apply

SEC. 293. The proceedings prescribed by law in civil cases, in respect to the impanelling of jurors, the keeping of them together, and the manner of rendering their verdict, shall be had upon trials of indictments, and prosecutions for criminal offences, except in cases otherwise provided by statute.

Same

SEC. 294. The provisions of law in civil cases, relative to compelling the testimony and attendance of witnesses, their examination on oaths and affirmations, and proceedings for contempt, to enforce the remedies and protect the rights of parties, shall extend to criminal cases, so far as they are in their nature applicable thereto, subject to the provisions contained in any statute.

Evidence in case of treason

SEC. 295. In trials for treason, no evidence shall be given of any overt act that is not expressly laid in the indictment, and no conviction shall be had upon any indictment for such offence, unless one or more overt acts be expressly alleged therein.

In conspiracy

SEC. 296. In trials for conspiracy, in those cases where the overt act is required by law to consummate the offence, no conviction shall be had unless one or more overt acts be expressly alleged in the indictment, and proved on the trial; but other overt acts, not alleged in the indictment may be given in evidence on the part of the prosecution.

In rape and crime against nature

SEC. 297. Proof of actual penetration into the body shall be sufficient to sustain an indictment for rape, or for crime against nature.

Reputation as to corporation.

SEC. 298. If in trial or proceeding, in a criminal case, the existence, constitution, or powers of any corporation shall become material, or be in any way drawn in question, it shall not be necessary to produce a certified copy of the charter or act of incorporation, but the same may be proved by general reputation, or by the printed statute book of the state government or country by which such corporation was created.

Person injured may be witness.

SEC. 299. No person shall be rendered incompetent to testify in criminal causes, by reason of his being the person injured, or defrauded, or intended to be injured or defrauded, or that would be entitled to satisfaction for the injury, or is liable to pay the costs of the prosecution.

Expert testimony.

SEC. 300. Persons of skill, or experts, may be called to testify as to the genuineness of a note, bill, draft, certificate of deposit, or other writing; but three witnesses at least shall be required to prove the fact, except in case of a larceny thereof.

Evidence as to gaming

SEC. 301. Any person called as a witness to testify against another for gaming, is a competent witness to prove the offence, although he may have been concerned as a party, and shall be compelled to testify as other witnesses; but he shall not be liable to indictment or punishment in any such case.

Joint defendants.

SEC. 302. When two or more defendants are jointly indicted for any felony, any one defendant requiring it shall be tried separately; in other cases defendants jointly indicted shall be tried jointly or separately, in the discretion of the court.

When defendant entitled to discharge.

SEC. 303. If any person indicted for any offence, and committed to prison, shall not be brought to trial before the end of the second term of the court having jurisdiction of the offence, which shall be held after the indictment is found, he shall be entitled to be discharged, so far as it relates to the offence for which he was committed, unless the delay shall be granted on the application of the prisoner, or shall be occasioned by the want of time to try the cause at such second term.

Same.

SEC. 304. If any person indicted for any offence, and held to answer on bail, shall not be brought to trial before the end of the third term of the court in which the cause is pending, which shall be held after such indictment is found, he shall be entitled to be discharged, so far as relates to such offence, unless the delay be granted on his application, or be occasioned by the want of time to try such cause at such third term.

Case may be continued

SEC. 305. If, when application is made for the discharge of a defendant, under either of the last two sections, the court shall be satisfied there is material evidence on the part of the territory, which cannot then be had; that reasonable exertions have been made to procure the same, and that there is just ground to believe that such evidence can be had at the succeeding term; the cause may be continued to the next term, and the person remanded or admitted to bail, as the case may require.

Nolle prosequi

SEC. 306. No indictment shall be *nolle prosequied*, except by order of the court, on motion.

Order of trial.

SEC. 307. The jury being impannelled and sworn, the trial shall proceed in the following order:

First. The attorney prosecuting must state the case, and offer the evidence in support of the prosecution.

Second. The defendant, or his counsel, may then state his defence, and offer evidence in support thereof.

Third. The parties may respectively offer rebutting testimony only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case

Fourth. When the evidence is concluded, unless the case is submitted without argument, the counsel for the territory shall make the opening argument, the counsel for the defendant or defendants shall follow, and the counsel for the territory shall conclude the argument.

Fifth. The court shall then charge the jury, in writing, and give such instructions as may be asked by the parties; or he may, in his discretion refuse to give the same, or may modify the same. When an instruction shall be given, the court shall write upon the margin thereof, "given." When such instruction shall be refused, the court in a similar manner, shall write the word "refused." All modifications of instructions shall be in writing. No refused instruction shall be read in the hearing of the jury; nor shall the court, in any case, make any oral comments to the jury on the instructions, unless by agreement of both parties. All instructions given and refused shall be filed among the papers of the cause.

Reasonable doubt.

Sec. 308. When there is reasonable doubt whether his guilt is shown, he must be acquitted. When there is reasonable doubt in which of two or more degrees of the offence he is guilty, he may be convicted of the lowest degree only.

Discharge of defendant

Sec. 309. When two or more persons are included in one prosecution, the court may, at any time before the defendant has gone into his defence, direct any defendant to be discharged, that he may be a witness for the territory. A defendant may, also, when there is not sufficient evidence to put him on his defence, at any time before the evidence is closed, be discharged by the court, for the purpose of giving evidence for a co-defendant. The order of discharge shall be a bar to any other prosecution for the same offence.

Effect of mistake.

Sec. 310. When it appears, at any time before verdict or judgment, that a mistake has been made in charging the proper offence, the defendant shall not be discharged, if there appears good cause to detain him in custody; but the court shall commit him, or recognize him, to answer to the offence; and, if necessary, recognize the witnesses to appear and testify.

Transfer to another county

Sec. 311. When it appears at any time before judgment, that the defendant is prosecuted in a county not having jurisdiction, the court may order the venue of the indictment to be corrected, and direct that all the papers and proceedings be certified and transferred to the proper court of the proper county, and recognize the defendant and witnesses to appear at such court on the first day of the next term thereafter, and the prosecution shall proceed in the latter court in the same manner as if it had been there commenced.

Jury discharged.

Sec. 312. When a jury has been empanelled in either case, contemplated in the last two preceding sections, such jury may be discharged without prejudice to the prosecution.

Conviction or acquittal a bar.

Sec. 313. When the defendant has been convicted or acquitted upon an indictment for an offence, consisting of different degrees, the conviction or acquittal shall be a bar to another indictment for the offence charged in the former, or for any lower degree of that offence, or for an offence necessarily included therein.

Juror must declare fact of which he has knowledge.

Sec. 314. If a juror has personal knowledge of any fact material to the cause, he must declare it to the court, and not to his fellow-jurors out of court; if a juror declare a fact material to the cause to his fellow-jurors, without the knowledge of the court and defendant, he may be punished as for a contempt.

SEC. 315. When the jurors are permitted to separate after being impanelled, and at each adjournment, they must be admonished by the court that it is their duty not to converse among themselves, nor suffer others to converse with them, on any subject connected with the trial, or to form or express an opinion thereon, until the cause is finally submitted to them.

Admonition to jury.

SEC. 316. After hearing the charge, the jury may either decide in court or retire for deliberation. They must retire under charge of an officer, sworn to keep them together, in some private and convenient place, without food, except such as the court shall order, and not permit any person to speak or communicate with them, nor do so himself, unless by order of the court, except to ask them whether they have agreed upon their verdict, and return them into court when they have so agreed, or when ordered by the court. The officer shall not communicate to any person the state of their deliberations.

The jury; after being charged.

SEC. 317. A conviction cannot be had on the testimony of an accomplice, unless he be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offence or the circumstances thereof.

Testimony of accomplice.

SEC. 318. The court may direct the jury in any case to be discharged, when it appears that it has no jurisdiction of the offence, or that the facts charged in the indictment do not constitute an offence punishable by law.

Discharge of jury

SEC. 319. When a jury is discharged for want of jurisdiction in the court to hear and determine the case, and it appears that the offence was committed within the jurisdiction of another district in this territory, the court shall commit the defendant for a certain time, to await a warrant for his arrest from the proper county, and in the meantime, the defendant may be admitted to bail under the usual legal restrictions provided in cases of commitment on preliminary examination.

Detention of defendant

SEC. 320. If no warrant is produced on or before the day the defendant is recognized to appear, in such case he shall be discharged, and his bail, if he have any, be exonerated.

Discharge of defendant.

SEC. 321. In such case the clerk of the court shall forthwith transmit a certified copy of the indictment, and of all papers filed in the action, to the district attorney of the proper county, at the expense of that county.

Duty of clerk.

Jury may view place of alleged offence

SEC. 322. Whenever, in the opinion of the court, it is proper that the jury shall view the place in which the offence is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of the sheriff, to the place, which may be shown to them by a person appointed by the court for that purpose

Jury may separate.

SEC. 323. Up to the time that the case is submitted to the jury, on the consent of both the district attorney and the attorney for the defendant, the jury, in the discretion of the court, may be allowed to separate, but not afterwards.

Jury to be fed and lodged.

SEC. 324. When a jury is required to be kept together, the sheriff shall provide them with board and lodging at the expense of the county.

Sickness of juror.

SEC. 325. If, before the conclusion of a trial a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged; in that case a new juror may be sworn and the trial begin anew.

Charge of the court

12th ses. p. 56.

SEC. 326. In charging the jury the court shall state to them all such matters of law as it shall think necessary for their information in giving their verdict, which shall be in writing and may, in the discretion of the court, by the jury be taken to their room when they retire to consider of their verdict, and by them shall be returned into court with their verdict in the case.

NOTE—Last clause of Sec. 326 act of Feb. 22d, 1881.

Same.

SEC. 327. Either party may present to the court any written charges upon matters of law, and request them to be given. If the court think them to be correct and pertinent, they shall be given; if not, they shall be refused.

Exceptions.

SEC. 328. On the trial of any indictment or prosecution for a criminal offence, exceptions to the decisions of the court may be made in the same cases and in the same manner as provided by law in civil cases: and bills of exceptions shall be settled, signed, and filed as allowed by law in civil actions.

Quarters for jury.

SEC. 329. A room shall be provided by the sheriff of each county for the jury, upon their retirement for deliberation, with suitable furniture, lights and fuel, unless the same shall have already been furnished by the county; such room, lights, and fuel shall be charged to the county.

Further instructions.

SEC. 330. After a jury has retired, if they so decree, they may be brought before the court for further instructions.

SEC. 331. After the case has been submitted to the jury, if they cannot agree, or one of the jury becomes so sick as to be unable to perform his duties as a juror, the jury may be discharged.

When jury discharged

SEC. 332. In all cases where a jury are discharged or prevented from giving a verdict from any cause, except when the defendant is discharged from indictment during the progress of the trial, or after the cause is submitted to them, for want of jurisdiction in the court, or because the territory has failed to make out a case, or when the defendant has made good his plea, the case may be again tried at the same or another term of court.

Second trial

SEC. 333. While the jury are absent considering the cause submitted to them, the court may adjourn from time to time, as to other business; but it shall nevertheless be deemed to be open for every purpose connected with the cause submitted to the jury, until a verdict be rendered or the jury discharged.

Court open for jury

SEC. 334. When the jury agree upon a verdict, they must be brought into court and their names called by the clerk, and if all be present, their foreman shall deliver their verdict to the court, who may, with their consent, in their presence correct the same as to matters of form; the court shall deliver the verdict to the clerk, who shall file and record the same, and then read the same to the jury, and ask them if the verdict as recorded is their verdict; if all of the jury assent thereto, they shall be discharged.

The verdict

SEC. 335. If either party desire it, the jury may be polled and if it be found that the verdict presented by the jury is not the verdict of the whole jury, the court may send the jury back to their room to further consider the case, or discharge the same, in its discretion.

Polling the jury.

SEC. 336. Any juror who shall fail to declare his dissent to the verdict, when the same is read to him by the clerk, if he do so dissent, may be dealt with by the court for contempt.

Juror in contempt

SEC. 337. When the jury return a verdict of not guilty, the defendant must be discharged at the time; but if they return a verdict of guilty, the defendant may be committed to the custody of the proper officer, and at the same time required to appear on some day certain, to receive the judgment of the court.

Proceedings upon verdict

SEC. 338. When a defendant is committed, his bail shall be exonerated, or any money deposited to secure his appearance refunded.

Exoneration of bail.

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Exceptions

SEC. 339. On the trial of an indictment, exceptions may be taken by the defendant to any decision of the court upon matters of law affecting his substantial rights.

Exception by defendant.

SEC. 340. The district attorney, or any counsel for the territory, may except to any decision of the court upon a question of law, in admitting or rejecting witnesses, or testimony, or in deciding any question of law, not a matter of discretion, or in giving or refusing any instructions to the jury, when the case is finally submitted to them.

Effect of reversal.

SEC. 341. If, upon appeal to the supreme court in any criminal case, on the part of the territory, it is found that the district court committed an error which should reverse the case, and a new trial be granted, it shall not be considered that the defendant was put in jeopardy by the former trial.

Verdict shall specify degree of offence.

SEC. 342. Upon the trial of any indictment for any offence, when by law there may be conviction of different degrees of such offence, the jury, if they convict the defendant, shall specify in their verdict of what degree of the offence they find the defendant guilty.

Verdict shall ascertain value of property

SEC. 343. When the indictment charges an offence against the property of another, by robbery, theft, fraud, embezzlement, or the like, the jury, on conviction, shall ascertain and declare in their verdict the value of the property taken, embezzled, or received, and the amount restored, if any, and the value thereof; but their failure to do so shall in nowise affect the validity of their verdict.

Jury may assess kind of punishment.

SEC. 344. In all cases of a verdict of conviction for any offence, when by law there is any alternative or discretion in regard to the kind or extent of punishment to be inflicted, the jury may assess and declare the punishment in their verdict; and the court shall render a judgment according to such verdict, except as hereinafter provided.

Court shall assess punishment where verdict fails.

SEC. 345. When a jury find a verdict of guilty, and fail to agree on the punishment to be inflicted, or do not declare such punishment by their verdict, or assess a punishment not authorized by law, and in all cases of judgment by confession, the court shall assess and declare the punishment, and render judgment accordingly.

Same.

SEC. 346. If the jury assess a punishment, whether of imprisonment or fine, below the limit prescribed by law, for the offence of which the defendant is convicted, the court shall pronounce sentence, and render judgment, according to the lowest limit prescribed by law, in such case.

Same

SEC. 347. If the jury assess a punishment, whether of imprisonment or fine, greater than the highest limit declared by law, for the offence of which they convict the defendant, the court shall disregard the excess, and pronounce sentence, and render judgment, according to the highest limit prescribed by law in the particular case.

Verdict may be changed by court

SEC. 348. The court shall have power in all cases of conviction, to reduce the extent or duration of the punishment assessed by a jury, if, in its opinion, the conviction is proper, and the punishment assessed is greater than, under the circumstances of the case, ought to be inflicted.

CHAPTER XIII.

PROCEEDINGS AFTER TRIAL AND BEFORE JUDGMENT.

Sec. 349. Bill of exceptions to be settled and signed.
Sec. 350. What must contain.
Sec. 351. Filed with clerk.
Sec. 352. New trial—definition of.
Sec. 353. Granting new trial—effect of.
Sec. 354. New trial—when granted.
Sec. 355. When application made.
Sec. 356. Written notice filed.
Sec. 357. Motion to arrest judgment—what is—causes for.
Sec. 358. Court may arrest judgment.
Sec. 359. Arrest of judgment—effect of.
Sec. 360. As to defendant, when judgment arrested.

Bill of exceptions.

SEC. 349. A bill containing the exceptions must be settled and signed by the judge, and filed with the clerk of the court, within ten days after the trial of the cause, unless further time be granted for good cause by the judge, or one of the justices of the supreme court.

Same.

SEC. 350. The bill of exceptions shall contain so much of the evidence only as is necessary to present the question of law upon which the exceptions were taken, and the judge shall, upon the settlement of the bill, whether agreed to by the parties or not, strike out evidence and other matters not material or pertinent to the questions raised.

Same

SEC. 351. The bill of exceptions must be filed with the clerk of the court, as soon as signed by the judge.

New trial

SEC. 352. A new trial is a re-examination of the issue, in the same court.

Eeffect of new trial.

SEC. 353. The granting of a new trial, places the parties in the same position as if no trial had been had. The former verdict cannot be used, or referred to, either in the evidence or argument.

SEC. 354. A new trial shall be granted:

12th ses p 43
New trial, when granted

First. When the jury has received any evidence, papers, or documents, not authorized by the court.

Second. When the jury has been separated without leave of the court, or have been guilty of any misconduct, tending to prevent a fair and due consideration of the case.

Third. When the verdict has been decided by means other than a fair expression of opinion on the part of all the jurors.

Fourth. When there is newly discovered evidence which could not, with reasonable diligence, have been discovered and produced at the trial by the party making the application.

Fifth. When the court has misdirected the jury in a material matter of law.

Sixth. When the court has either admitted illegal, or excluded legal, evidence; or there has been any abuse of discretion by which the party was prevented from having a fair trial.

Seventh. When the verdict is contrary to law or the evidence.

12th ses. p 43
Application

SEC. 355. The application for a new trial shall be made upon motion, and, if based upon any of the grounds mentioned in the first four subdivisions of the preceding section, written notice of such motion must be filed within thirty days after the discovery of the facts upon which the party relies in support of his motion; in all other cases notice of motion must be filed within ten days after the rendition of the verdict.

12th ses p. 43
Same.

SEC. 356. Applications for a new trial, if made for any of the causes mentioned in the first four subdivisions of section 354 of this division, shall be based upon affidavits, which must be filed at the same time as the notice of motion, or within such further time as may be allowed by the court or judge; in all other cases the application must be made either upon a bill of exceptions, or upon the minutes of the court; and the notice of motion must state particularly the error upon which the party making the application relies. An application for a new trial shall be heard on the second day after notice filed, or as soon as practicable thereafter; and in all cases, if notice of motion is filed before judgment or execution, the court or judge may, in his discretion, make an order staying further proceedings in the case until such motion is disposed of.

NOTE—Sections 354 355 and 356 from act of Feb. 16th, 1881

Motion in arrest of judgment

SEC. 357. A motion in arrest of judgment is an application on the part of the defendant, that no judgment be rendered on a verdict of guilty, or finding of the court; and may be granted by the court for either of the following causes:

First. That the grand jury who found the indictment had no legal authority to inquire into the offence charged, by reason of it not being within the jurisdiction of the court.

Second. That the facts stated do not constitute a public offence.

Arrest of judgment

SEC. 358. The court may also, in its view of any of these defects, arrest the judgment without motion.

Effect of arrest of judgment.

SEC. 359. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found, except in cases otherwise provided for.

Defendant recommitted

SEC. 360. When judgment is arrested in any case, and there is reasonable ground to believe that the defendant can be convicted of an offence, if properly indicted, the court may order the defendant to be recommitted, or admitted to bail, anew, to answer a new indictment.

CHAPTER XIV.

JUDGMENT AND EXECUTION.

Sec. 361. *If judgment not arrested, or new trial granted, defendant sentenced.*
Sec. 362. *Time appointed therefor.*
Sec. 363. *If for felony, defendant to be present; if misdemeanor, may be absent.*
Sec. 364. *Defendant brought before court, if in custody.*
Sec. 365. *If necessary, defendant arrested.*
Sec. 366. *Defendant to be informed of verdict; right to show cause against pronouncing sentence.*

Sec. 367. If sufficient cause not shown, judgment pronounced.
Sec. 368. If ordered to pay fine, committed until paid.
Sec. 369. When prosecutor adjudged to pay costs.
Sec. 370. Person imprisoned for fine and costs, when and how discharged.
Sec. 371. Clerk to enter judgment; court to inspect.
Sec. 372. If imprisonment in county jail, clerk to deliver sheriff transcript.
Sec. 373. Clerk to deliver certified copy of sentence to sheriff; sheriff to execute sentence.
Sec. 274. Power of sheriff conveying criminal to place of punishment.
Sec. 375. In case criminal sentenced to death.
Ses. 376. Death penalty, manner of infliction.
Sec. 377. In case of respite; duty of sheriff.
Sec. 378. Sentence of death; how executed,
Sec. 379. Governor, or court, may suspend execution.
Sec. 380. If after sentence criminal become insane; proceeding of inquiry.
Sec. 381. Prosecuting attorney shall attend inquiry.
Sec. 382. If criminal insane, execution suspended.
Sec. 383. Inquisition transmitted to governor; duty of governor.
Sec. 384. If female criminal be pregnant; proceedings.
Sec. 385. If such female quick with child, execution suspended.
Sec. 386. If causes of suspension ceases, duty of governor.
Sec. 387. Habeas corpus to issue, when.
Sec. 388. Duty of court when criminal brought before it.
Sec. 389. Executions for fines issued by clerk, end of term.
Sec. 390. If defendant unable to pay fine, how released, and when.
Sec. 391. Defendant released on recommendation, when.
Sec. 392. If defendant insane, judgment not entered.
Sec. 393. If defendant declare he is insane, duty of court, and proceeding thereon.

SEC. 361. After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, if the judgment be not arrested, or a new trial granted, the court shall appoint a time for pronouncing judgment.

Time for pronouncing judgment.

SEC. 362. The time appointed shall be at least two days after the verdict, if the court remain in session so long; if not, then as remote a time as can conveniently be allowed.

Same

SEC. 363. For the purposes of judgment, if the conviction be for felony, the defendant must be personally present; if for a misdemeanor, judgment may be pronounced in his absence, except where the punishment is by imprisonment.

When defendant shall be present.

SEC. 364. When the defendant is convicted of any offence, if he be in custody, the court may direct the officer in whose custody he is to bring him before it for judgment.

Defendant to be presented for judgment.

SEC. 365. If in any case the defendant be not present when his personal attendance is necessary, the court may order the clerk to issue a warrant for his arrest, which may be served in any county in the territory, as a warrant of arrest in other cases.

Warrant.

SEC. 366. When the defendant appears for judgment, he must be informed by the court of the verdict of the jury, and asked whether he have any legal cause to show why judgment should not be pronounced against him.

Inquiry to defendant

SEC. 367. If no sufficient cause be alleged, or appear to the court, why judgment should not be pronounced, it shall thereupon be rendered.

The judgment.

SEC. 368. When the defendant is adjudged to pay any fine and costs, the court shall order him to be committed to the jail of the county until the same be paid.

Same.

SEC. 369. In all cases in which the prosecutor shall be adjudged to pay the costs, he shall be sentenced to pay the costs of the prosecution, or give security to the sheriff to pay the same in ten days, and stand committed until the sentence be complied with.

Same.

SEC. 370. Any person imprisoned for failure to pay any fine or costs, shall be discharged after being imprisoned one day for every five dollars of the fine and costs, if it appear by affidavit or other proof that such person is unable to pay the same; but execution may issue against the property of the defendant or prosecutor, as on other judgments.

Time of imprisonment.

Duty of clerk.

SEC. 371. Whenever judgment upon a conviction shall be rendered in any court, the clerk of such court shall enter such judgment fully in the minutes, stating briefly the offence for which conviction shall have been had, and the court shall inspect such entries and conform them to the facts; but the omission of this duty, either by the clerk or judge, shall in no wise affect or impair the validity of the judgment.

Same

SEC. 372. Whenever a sentence of imprisonment in a county jail shall be pronounced upon any person convicted of any offence, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, a transcript of the entry of such conviction and of the sentence thereupon, duly certified by such clerk, which shall be sufficient authority to such sheriff to execute such sentence, and he shall execute the same accordingly.

Same.

SEC. 373. When any criminal shall be sentenced to any punishment, the clerk of the court in which the sentence was passed shall forthwith deliver a certified copy thereof to the sheriff of the county, who shall, without delay, either in person or by deputy, cause such criminal to receive the punishment to which he was sentenced.

Power of sheriff.

SEC. 374. Such sheriff or deputy, while conveying the criminal to the place of punishment, shall have the same power and like authority to require the assistance of any citizen of the territory in securing such criminal, and retaking him if he shall escape, as such sheriff or deputy has in any other case; and all persons who shall neglect or refuse to assist such sheriff or deputy, when required, shall be liable to the same penalties as for similar refusals in other cases.

Death warrant.

SEC. 375. Whenever any criminal shall be sentenced to the punishment of death, the court shall cause to be made out, sealed and delivered to the sheriff of the county, a warrant, stating such conviction and sentence, and appointing a day on which such sentence shall be executed, which shall not be less than four nor more than eight weeks from the time of the sentence.

Infliction of death penalty.

SEC. 376. The punishment of death prescribed by law must be inflicted by hanging by the neck, at such time as the court may adjudge.

Duty of sheriff in case of respite.

SEC. 377. When execution of such sentence is respited to a further day by the governor, the sheriff must note the same on the warrant, and the defendant must be detained in custody until the day to which the respite is granted, at which time the sheriff, unless the judgment is revoked, or the defendant is pardoned, must execute the sentence, between the hours specified in the judgment, and return the warrant with the respite.

Sentence of death; where and in whose presence executed

SEC. 378. The sentence of death shall be executed in some private enclosure, as near the jail as possible. The sheriff shall invite, to be present at the execution, by at least three days' notice, the judge of the court, the attorney prosecuting, and the clerk of the court, together with two physicians, and twelve reputable citizens to be selected by him. He must also, at the request of the prisoner, permit any minister of the gospel whom the prisoner may name, and any of his relations and friends whom he may desire, not exceeding two, to attend the execution, and also such peace officers as the sheriff may deem proper. No person other than those mentioned in this section can be present at the execution, nor can any person under age be allowed to witness the same.

Postponement by governor or court.

SEC. 379. For good cause shown, the court in which the conviction is had, or the governor, may prolong the time or suspend the execution of any criminal sentenced to the punishment of death; and no other court or officer shall have such authority, except in the cases and in the manner hereinafter provided.

Inquiry as to sanity of criminal.

SEC. 380. If, after any criminal be sentenced to the punishment of death, the sheriff shall have cause to believe that such criminal has become insane, he may summon a jury of twelve competent jurors, with the concurrence of the judge of the court by which the judgment was rendered, to inquire into such insanity, giving notice thereof to the attorney prosecuting.

Same

SEC. 381. The attorney prosecuting shall attend such inquiry, and may produce witnesses before the jury, and may cause subpœnas to be issued by the clerk for that purpose; and disobedience thereto may be punished by the district court in the same manner as in other cases.

Duty of sheriff if criminal insane.

SEC. 382. The inquisition of the jury shall be signed by them and by the sheriff. If it be found that such criminal is insane, the sheriff shall suspend the execution of the sentence until he receive a warrant from the governor, or from the supreme or district court, as hereinafter authorized, directing the execution of the criminal.

Duty and power of governor.

SEC. 383. The sheriff shall immediately transmit such inquisition to the governor, who may, as soon as he shall be convinced of the sanity of such criminal, issue a warrant appointing a time and place for the execution, pursuant to his sentence, or he may, in his discretion, commute the punishment to imprisonment for life.

Proceedings if criminal pregnant.

SEC. 384. If, after any female criminal is sentenced to the punishment of death, the sheriff shall have reason to suspect that she is pregnant, he shall, in like manner, summon a jury of six persons, not less than three of whom shall be physicians, and shall give notice thereof to the attorney prosecuting, who shall attend, and the proceedings shall be had as provided in the second preceding section.

Same.

SEC. 385. The inquisition shall be signed by the jury and the sheriff, and if it appear that such female is quick with child, the sheriff shall, in like manner, suspend the execution of her sentence, and transmit the inquisition to the governor.

Same.

SEC. 386. Whenever the governor and court shall be satisfied that the cause of such suspension no longer exists, the governor shall issue his warrant, appointing a day for the execution of such criminal, pursuant to her sentence, or he may, at his discretion, commute her punishment to imprisonment for life.

In case criminal has not been executed.

SEC. 387. Whenever, for any reason, any criminal sentenced to the punishment of death shall not have been executed pursuant to such sentence, and the same shall stand in full force, the supreme court, or the district court of the county in which the conviction was had, on the application of the attorney prosecuting, shall issue a writ of *habeas corpus* to bring such criminal before such court; or if he be at large a warrant for his apprehension may be issued by such court, or any judge thereof.

Same.

SEC. 388. Upon such criminal being brought before the court, he shall proceed to inquire into the facts, and, if no legal reason exists against the execution of such sentence, such court shall issue a warrant to the sheriff of the proper county, commanding him to do execution of the sentence, at such time as shall be appointed therein; which shall he obeyed by the sheriff accordingly.

Executions for fines, etc.

SEC. 389. It shall be the duty of the clerk of the district court, at the end of each term, to issue executions for all fines imposed, and the costs of convictions in criminal cases during the term and remaining unpaid, which shall be executed in the same manner as executions in civil cases, and the property of the defendant and his bail may be seized and sold thereon, notwithstanding the defendant may be in custody for the same demand.

13th ses p 32.

Discharge of pauper prisoner

SEC. 390. When judgment of fine and costs is entered against a defendant, and it is ordered that he be committed until the same shall be paid, if at any time thereafter the defendant prove to the court, or judge thereof, by his own affidavit or that of any other person, that he is unable to pay such fine and costs, or any part thereof, the court, or judge thereof, may order the sheriff to release him upon his having been confined in jail one day for every five dollars of such fine and costs, or any portion thereof remaining unpaid; but if the defendant do not prove to the satisfaction of the court, or the judge thereof, that he is unable to pay such fine and costs, or any part thereof, he shall not be released from confinement, except as hereafter provided, unless the sheriff has made the same upon execution out of his property.

13th ses p 33.

Discharge in other cases.

SEC. 391. Whenever any defendant shall have been committed to jail for the failure to pay any fine and costs adjudged against him, and has failed to prove to the satisfaction of the court or judge thereof, that he is unable to pay the same, or any part thereof, the court shall order that he be discharged from custody when he shall have served one day for every two dollars of such fine and costs; but this shall not discharge the judgment for fine and costs, which may at any time thereafter, within the time limited by law, be collected upon execution issued thereon.

NOTE.—Sections 390 and 391 from an act of Feb 27th, 1883.

No judgment against insane defendant

SEC. 392. Judgment shall not be entered against any defendant while he is insane.

Proceedings if defendant declare himself insane

SEC. 393. If any defendant, upon whom the court is about to pass judgment, declare that he is insane, the court, if he finds there is reasonable cause for believing the declaration, may order a jury to be impanelled to determine the fact; and witnesses may be introduced on the part of the defendant and the territory. If the jury find that the defendant is insane, the court shall order him to be placed in the custody of the person provided by law for the keeping of insane persons; if no such person be provided, then to the custody of some suitable person. Whenever it shall appear to the satisfaction of the court that such person has become sane, he shall order him to be produced for judgment.

CHAPTER XV.

APPEALS.

Sec. 394. Appeal to supreme court.
Sec. 395. Manner of taking appeal.
Sec. 396. Appeal by territory—in what cases taken.
Sec. 397. Time in which must be taken.
Sec. 398. How appeal is taken.
Sec. 399. Appeal by territory does not stay judgment against defendant.
Sec. 400. Appeal not to stay execution; exceptions.
Sec. 401. Appeal by territory from question reserved: what to be certified.
Sec. 402. When appeal stands for trial.
Sec. 403. When several defendants tried, one may appeal.
Sec. 404. Powers of appellate court on appeal.
Sec. 405. If judgment reversed, duty of supreme court.
Sec. 406. Judgment given without regard to technical errors, etc., unless substantial rights affected.
Sec. 407. As to dismissal for informality.
Sec. 408. Judgment of affirmance.—effect of.
Sec. 409. Opinions to be in writing.

Appeal

SEC. 394. An appeal to the supreme court may be taken by the defendant, as a matter of right, from any judgment against him, and, upon appeal, any decision of the court or intermediate order, made in the progress of the case may be reviewed.

Same.

SEC. 395. An appeal from a judgment in a criminal action may be taken in the manner and in the cases prescribed in this chapter.

Appeal by territory.

SEC. 396. Appeal to the supreme court may be taken by the territory in the following cases, and no other:

First. Upon a judgment for the defendant in quashing or setting aside an indictment.

Second. Upon an order of the court arresting the judgment.

Third. Upon a question of law reserved by the territoy.

Appeal when taken.

SEC. 397. The appeal must be taken within six months after the judgment is rendered, and the transcript must be filed within thirty days after the appeal is taken.

SEC. 398. An appeal is taken by the service of a notice upon the clerk of the court where the judgment was entered, stating that the appellant appeals from the judgment. If taken by the defendant, a similar notice must be served upon the attorney prosecuting. If taken by the territory, a similar notice must be served upon the defendant, if he can be found in the county; if not found, by posting up a notice three weeks in the clerk's office.

Appeal how taken

SEC. 399. An appeal taken by the territory in no case stays or affects the operation of the judgment in favor of the defendant until the judgment is reversed.

No stay in appeal by territory

SEC. 400. An appeal taken to the supreme court, from a judgment of conviction, does not stay the execution, except when the judgment is for a fine, or fine and costs only, in which case the execution may be stayed by an order of the supreme court, or a judge thereof.

As to stay in appeal by defendant.

SEC. 401. In case of an appeal from a question reserved, on the part of the territory, it is not necessary for the clerk of the court below to certify, in the transcript, any part of the proceeding and records, except the bill of exceptions and the judgment of acquittal. When the question reserved is defectively stated, the supreme court may direct any other part of the proceedings and record to be certified to them.

Transcript in appeal by territory

SEC. 402. An appeal shall stand for trial immediately after filing the transcript, if the supreme court is in session; if not in session, at the next term thereafter, on proof of notice of appeal to the appellee.

Appeal when tried

SEC. 403. When several defendants are tried jointly, any one or more of them may take an appeal; but those who do not join in the appeal shall not be affected thereby.

Appeal by one defendant.

SEC. 404. The appellate court may reverse, affirm, or modify the judgment appealed from, and may, if necessary or proper, order a new trial. In either case the cause must be remanded to the court below, with proper instructions and the opinion of the court, within the time and in the manner to be prescribed by rule of court.

Power of appellate court

SEC. 405. When a judgment against the defendant is reversed, and it appears that no offence whatever has been committed, the supreme court must direct that the defendant be discharged; but if it appear that the defendant is guilty of an offence, although defectively charged in the indictment, the supreme court

Same.

must direct the prisoner to be returned, and delivered over to the jailer of the proper county, there to abide the order of the court in which he was convicted.

Technicalities disregarded.

SEC. 406. On an appeal the court must give judgment, without regard to technical errors or defects, or to exceptions, which do not affect the substantial rights of the parties.

Informality or defect not regarded.

SEC. 407. An appeal shall not be dismissed for any informality or defect in the taking thereof. If the same be corrected within a reasonable time after an appeal has been dismissed, another appeal may be taken.

If judgment affirmed.

SEC. 408. On a judgment of affirmance against the defendant, the original judgment must be carried into execution, as the appellate court shall direct.

Written opinions.

SEC. 409. All opinions of the supreme court in criminal prosecutions must be given in writing, and recorded in the order book.

CHAPTER XVI.

COSTS IN CRIMINAL CASES.

Sec. 410. Costs against defendant unsatisfied, paid by county; duty of district attorney, judge, and commissioners, as to costs.
Sec. 411. Costs, in offence less than felony, if person discharged.
Sec. 412. Costs if felony charged, and defendant discharged.
Sec. 413. If defendant acquitted on indictment, jury to determine costs.
Sec. 414. Cases not otherwise provided, county to pay costs.
Sec. 415. In case of conviction, territory to pay no costs.
Sec. 416. Subpœnas for witnesses in criminal cases—costs.
Sec. 417. If witness once recognized or subpœnaed—costs.
Sec. 418. Costs for ironing prisoner, medical service, etc., paid by county.
Sec. 419. Fines, penalties, and forfeitures—to whom paid.
Sec. 420. Duty of clerk to tax costs.
Sec. 421. Duty of sheriff to make out fee bill, and deliver to prosecuting attorney; prosecuting attorney's duties thereon.

Sec. 422. Clerk to keep attendance of jurors and certify.

Sec. 423. Attendance of witnesses made under oath; county to pay clerk for certain services.

Costs.

Sec. 410. In case the defendant shall be acquitted, or in case he shall be convicted, the executions shall issue against him for the costs, and shall be returned unsatisfied in whole or in part, the costs remaining unpaid shall be paid by the county in which the offence was committed; and in case the conviction or acquittal shall be in a county other than that in which the offence was committed, it shall be the duty of the judge before whom the trial was had, and the district attorney prosecuting such defendant, to certify under their hand, authenticated by the seal of the court, the amount of such costs; and it shall be the duty of the board of county commissioners of the county in which such offence was committed, to audit and allow the amount of such costs. and issue an order therefor upon the county treasurer of such county. In all cases, except for a felony, when the indictment shall be returned "not a true bill," the prosecutor shall be adjudged to pay the costs, unless the grand jury shall determine that the county, and not the prosecutor, shall pay the same. The opinion of a majority of the grand jury, certified by their foreman, stating who shall be liable for costs, shall be conclusive on the court rendering judgment in the case.

Same.

Sec. 411. If any person charged with an offence less than a felony shall be discharged by the officer taking his examination, the costs shall be paid by the prosecutor, or person on whose oath or information the same shall have been instituted, unless the officer shall certify that there was probable cause for the prosecution, in which event they shall be paid by the county in which the offence was committed. When the prosecutor is condemned to pay the costs, the officer taking the examination shall issue execution for them forthwith, if demanded. When the bill of costs shall be certified to the tribunal transacting county business, for payment, the same shall be strictly examined by the tribunal, and no allowance shall be made but for such services as are expressly compensated by law.

Same.

Sec. 412. If a person charged with a felony shall be discharged by the officer taking his examination, or if recognized or committed for any such offence, and no indictment be preferred against him, the costs shall be paid by the county, which shall be certified for allowance, in the manner hereinafter declared.

Same.

SEC. 413. If, upon the trial of an indictment whereon the name of the prosecutor is endorsed as such, according to law, the jury shall acquit the defendant, they shall determine and return, together with their verdict, whether the prosecutor or the county shall pay the costs, and the court shall render judgment accordingly.

Same

SEC. 414. In all cases, not herein otherwise provided for, the costs shall be paid by the county in which the offence was committed.

Same

SEC. 415. Whenever any person shall be convicted of any crime or misdemeanor, no costs incurred on his part, except fees for board, shall be paid by the county or territory, except as herein otherwise provided.

Witness fees

SEC. 416. No subpœna for a witness in any criminal case shall be issued, unless the name of such witness is endorsed on the indictment, or the attorney prosecuting, or the prosecutor in the cause, or the defendant or his attorney shall order the same; and no subpœna shall be issued for any witness, unless the accused is in custody, or on trial, or unless the clerk shall be satisfied that he will be in attendance on the court, at the return term of the process; and all costs unnecessarily incurred by a violation of this section shall be taxed against the clerk.

Duty of witness.

SEC. 417. Whenever a witness in a criminal case is once recognized or subpœnaed, he shall attend under the same until he is discharged by the court. and no costs shall be allowed for any subsequent recognizance or subpœna against the same witness.

Provision for ironing and keeping prisoner.

SEC. 418. Whenever the tribunal transacting county business of any county of which the offender shall have committed any crime, for which he is imprisoned, may be satisfied of the necessity of so doing, may make an allowance for ironing the prisoner, and may allow a moderate compensation for medical services. fuel, bedding and menial attendance, for any prisoner which shall be paid out of the county treasury.

Fines paid into the treasury.

SEC. 419. All fines and penalties imposed, and all forfeitures incurred in any county, shall be paid into the treasury thereof, for the benefit of said county.

Duty of clerk to tax costs.

SEC. 420. The clerks of the several courts in the territory in which any criminal cause shall have been determined or continued generally, and in which the territory or county shall be liable for costs, shall before the next succeeding term, tax all costs which shall have accrued in the same, and make out and deliver to the attorney prosecuting in said court, within the time aforesaid, a complete fee bill, specifying each item of service, and the fee therefor; and if any clerk fail to perform the duties hereby enjoined on him, any person injured by such neglect, may, by motion in said court, giving two days' notice thereof to such clerk or his deputy, recover against the clerk treble the amount of costs to which he is entitled in the cause, in which the clerk shall have failed to make out and deliver to the prosecuting attorney a fee bill.

Sheriff to present bill of fees to district attorney

SEC. 421. It shall be the duty of the sheriff of any county to make out a bill of all fees due him in any criminal case, or for summoning any grand or petit jury in a criminal action, within twenty days after the close of each term of the court, during which such fees were incurred by the county, and to present the same to the attorney prosecuting for such county, who shall ascertain as far as practicable, whether the services have been rendered for which charges are made, and whether compensation is expressly given by law for the services charged, or whether greater charges are made than the law authorizes; and if he find that the said fee bill has been made out in conformity with law, he shall so certify in his official capacity; if he do not so find, he shall point out to the sheriff wherein such bill is incorrect; if the sheriff fail to obtain such certificate from the district attorney, the county commissioners, or other tribunal transacting county business, may refuse to allow the same, unless it appear to them that the district attorney has acted unfairly, or has been mistaken in the premises.

Time of jurors.

SEC. 422. The clerk of the district court shall keep the time of attendance of all jurors in criminal cases, and shall certify the same to the county clerk.

Witness' fee bill

SEC. 423. Witnesses in criminal cases shall make out a bill, under oath, of the fees to which they are entitled in each case, and file the same with the clerk of the district court, and the county shall pay such clerk for the services in this and the preceding section; *Provided*, That no witness shall receive fees in any more than one criminal case on the same day during the same term of court.

NOTE—Act of Feb 12th, 1874

CHAPTER XVII.

WITNESSES.

Sec. 424. Witnesses—how served.
Sec. 425. Of disobedience to subpœna.
Sec. 426. Witnesses to attend from any part of the territory—fees.
Sec. 427. Rights of defendant to process for witnesses.
Sec. 428. Not necessary to tender fees to witness.
Sec. 429. Depositions—how taken and read.
Sec. 430. When deposition taken by defendant.
Sec. 431. Subpœnas in criminal cases. Penalty for violations.

Service of subpœna

SEC. 424. Witnesses shall be served with subpœna in the same manner as in civil cases.

Disobedience punished.

SEC. 425. Disobedience to a subpœna, or a refusal to answer as a witness, may be punished by the court or magistrate as a contempt in the same manner as in civil cases.

Attendance and fees.

SEC. 426. Witnesses may be required to attend from any part of the territory in criminal cases, and be entitled to the same fees as witnesses in civil cases.

Defendant entitled to process

SEC. 427. Every person indicted or prosecuted for a criminal offence shall be entitled to subpœnas and compulsory process for witnesses in like manner, and under like circumstances, as parties in civil cases.

Fees need not be advanced

SEC. 428. It shall not be necessary to pay or tender any fees whatever to any witness summoned on the part of the territory, or on the part of the defendant, but such witness shall be bound to attend, and be liable for his non-attendance in the same manner as if the fees allowed witnesses had been duly paid to him.

Depositions.

SEC. 429. The depositions shall be taken and returned in the same manner prescribed by law in civil cases; and such depositions shall be read in like cases and with like effect and subject to the same rules as in civil cases.

Same.

SEC. 430. When any issue of fact is joined to any criminal case, if any material witness for the defendant resides out of the territory, enciente, sick, or infirm, or is bound on a voyage, or is about to leave the territory, such defendant may apply to the court in which the cause is pending for leave to take the deposition of such witness, and the court may grant the same in its discretion. Such deposition, if taken, shall be taken according to the rnles prescribed for taking depositions in civil cases.

12th ses p 7 sec. 3

Witnesses from other counties

SEC. 431. In all criminal prosecutions, subpœnas may be issued for witnesses in another county. In such case, it shall be the duty of the clerk of the court in which the prosecution is pending to mail the subpœna to the sheriff of the county in which the witness resides. Upon receiving the same, it shall be the duty of the sheriff forthwith to serve the same, if the witness can be found, and to return as soon as may be the subpœna by mail to the clerk of the court, with his service endorsed thereon. The sheriff shall be entitled to like fees for his services as in other cases of serving subpœnas. Any sheriff or other officer violating the provisions of this section shall be liable to the penalties prescribed in section 655 of the Fifth Division of the Revised Statutes of Montana.

NOTE—Sec 431 from act of Feb 22, 1881 See section 75, First Division

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CHAPTER XVIII.

MISCELLANEOUS PROVISIONS.

Sec. 432. When stolen or embezzled property is concealed.
Sec. 433. Search warrant to issue.
Sec. 434. Place or house searched on proof.
Sec. 435. Warrant—by whom executed.
Sec. 436. Person committed to jail may be searched.
Sec. 437. Officer shall hold property alleged to be stolen.
Sec. 438. Magistrate may order such property delivered to owner.
Sec. 439. If such property in custody of magistrate, delivered to owner on payment of expenses, etc.
Sec. 440. Court may order property delivered to owner.
Sec. 441. If property not claimed may be sold.
Sec. 442. If property living animal, or perishable, may be sold.
Sec. 443. Case of sale under last section, description of property filed.
Sec. 444. Warrants in criminal cases—how signed.
Sec. 445. Recognizance—how executed.
Sec. 446. Conveyance of prisoner from one county to another.
Sec. 447. Rights and power of officer conveying prisoner.
Sec. 448. Jailor to receive prisoner in transit when required.

Sec. 449. Duty of governor in making requisition for fugitive.

Sec. 450. Expenses under last section—how paid

Sec. 451. Jury may view place where material fact occurred.

Sec. 452. Officer may break enclosure to make arrest—when.

Sec. 453. If officer corruptly select jury—cause of challenge.

Sec. 454. All processes of district court executed by sheriff.

Sec. 455. Territorial prison—keeper to return prisoner for new trial—fees therefor.

Sec. 456. Term "person" may include territory, United States, etc.

Sec. 457. Definitions of terms of pleading and practice adopted.

Sec. 458. If money deposited instead of bail may be returned—when.

Sec. 459. Governor may offer reward for fugitive—when.

Sec. 460. Person returning fugitive—how compensated.

Sec. 461. Governor may include conditions in pardon.

Sec. 462. Limitation—pendency of quashed indictment not counted.

Sec. 463. Property liable for costs when arrest made.

Sec. 464. Property liable of person signing recognizance.

Sec. 465. Insane person not to be tried.

Sec. 466. If defendant declare he is insane when arraigned court to institute inquiry.

Sec. 467. If sane, trial to proceed; if insane, retained in custody.

Sec. 468. If become sane returned to court and tried.

Sec. 469. Costs of keeping insane defendant—how paid.

Sec. 470. Service of process on corporations in criminal cases.

Sec. 471. Proceedings in case corporation does not enter an appearance either by attorney or agent.

Sec. 472. Persons convicted of a felony to be sentenced to confinement at hard labor.

Sec. 473. The officer having in charge a prisoner sentenced to confinement at hard labor to furnish labor.

Search warrant.

SEC. 432. Upon complaint being made on oath to any officer authorized to issue process for the apprehension of offenders, that any personal property has been stolen or embezzled, and that the complainant has reason to believe that such property is concealed in any particular house or place, if such magistrate shall be satisfied that there is reasonable ground for such suspicion, he shall issue a warrant to search for such property.

What warrant shall contain.

SEC. 433. Such warrant shall be directed to the sheriff of the county, and shall command him to search the place where such property is suspected to be concealed in the daytime, which place shall be designated, and the property particularly described in such warrant, and to bring such property before the magistrate issuing the warrant.

In case of positive proof.

SEC. 434. If there be positive proof that any property stolen or embezzled is concealed in any particular place or house, the warrant may order the searching of such place or house.

By whom executed.

SEC. 435. Every such warrant shall be executed by a public officer, and not by any other person.

Search of the person

SEC. 436. Any magistrate who shall commit any person charged with an offence to jail, or by whom any vagrant or disorderly person may be committed, may cause such person to be searched for the purpose of discovering any money or property he may have, and, if any be found, the same may be taken and applied to the support of such person while in confinement.

Duty of officer as to custody of stolen property.

SEC. 437. When property alleged to have been stolen shall come into the custody of any sheriff, coroner, constable, marshal, or any person authorized to perform the duties of such officer, he shall hold the same, subject to the order of the officer authorized to direct the disposition thereof.

Delivery to rightful owner.

SEC. 438. Upon receiving satisfactory proof of the title of any owner of such property, the magistrate who shall take the examination of the person accused of any of the offences rêferred to in the preceding section, may order the same to be delivered to such owner on his paying the reasonable and necessary expenses incurred in the preservation of such property, to be certified by such magistrate, which order shall entitle the owner to demand and receive such property.

Same

SEC. 439. If such property come into the custody of any magistrate, upon satisfactory proof of the title of any owner thereof, it shall be delivered to him on the payment of the necessary expenses incurred in the preservation thereof, to be certified by such magistrate.

Same.

SEC. 440. If such property shall not have been delivered to the owner thereof, the court before which a conviction shall be had for the stealing, embezzling, or obtaining such property, may, upon proof of the ownership of any person, order the same to be restored to him, on the payment of the expenses incurred in the preservation thereof.

Sale of stolen property.

SEC. 441. If such property shall not be claimed by the owner within six months from the time any person shall have been convicted of obtaining it in any of the modes referred to in this act, the court or magistrate authorized by the preceding provisions to order a restoration may order the same to be sold; and the the proceeds of the sale, after payment of the expenses of preservation, and sale of the property, shall be paid into the county treasury for the use of the county.

Same.

SEC. 442. If the property thus obtained be a living animal or be of a perishable nature, the court or magistrate authorized to order a restoration may order a sale thereof, and the proceeds shall be applied in the same manner hereinbefore directed in respect to such property.

Owner may claim proceeds.

SEC. 443. In case of sale, as specified in the last section, a particular description of the property shall be made out in writing, and filed with the court or officer making the order of sale so that the owner may identify the same, if he shall claim the proceeds within the time limited by law for making his claim.

Warrants; how tested

SEC. 444. Warrants authorized by law to be issued in criminal cases may be under the hand of the magistrate issuing the same, and shall be as valid and effectual in all respects as if sealed.

Recognizances.

SEC. 445. All recognizances required or authorized to be taken in any criminal proceedings in open court by any court of record, shall be entered on the minutes of such court, and the substance thereof shall be read to the person recognized; all other recognizances in any criminal matter or proceeding, or in any proceeding of a similar nature, shall be in writing, and subscribed by the parties to be bound thereby.

Conveyances of prisoner from one coun- to another

SEC. 446. Every officer or other person who shall have arrested, or have in his custody, under authority of the laws of this territory, any prisoner who is to be conveyed from one county to another, may take such prisoner through such parts of any county as shall be in the ordinary route of travel from the place where such prisoner shall have been arrested to the place where he is to be conveyed and delivered under the process or authority by which such prisoner shall have been arrested or detained.

Same

SEC. 447. The officer or person having such prisoner in charge shall not be liable to arrest in civil process while on his route; and he shall have the like power to require any person to aid in securing such prisoner, and retaking him if he escapes, as sheriffs or other officers have in their own county; and a refusal or neglect to render such aid shall be an offence punishable in the same manner as for disobedience to a summons to assist in the execution of a process.

Same.

SEC. 448. The jailer of every county through which such prisoner may be taken is required to receive and safely keep such prisoner in the jail of which he has charge, when requested by the officer or person having lawful charge of such prisoner, and re-deliver him on demand of such officer or person.

Warrant of governor for fugitive

SEC. 449. Whenever the governor of this territory shall demand a fugitive from justice from the executive of another state or territory, and shall have received notice that such fugitive will be surrendered, he shall issue his warrant, under the seal of the territory, to some messenger, commanding him to receive such fugitive, and convey him to the sheriff of the county in which the offence was committed or is by law cognizable.

Payment of expense of arresting fugitive.

SEC. 450. The expenses which may accrue under the last section, being first ascertained to the satisfaction of the governor, shall, on his certificate, be allowed, and paid out of the territorial treasury, as other demands against the territory.

Jury may view place where fact occurred

SEC. 451. Whenever, in the opinion of the court, it is proper for the jury to have a view of the place in which any material fact occurred, it may order them to be conducted in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent, no person other than the officer and a person appointed to show them the place shall speak to them on any subject connected with the trial.

Officer may break enclosure, when

SEC. 452. To make an arrest in criminal actions, the officer may break open any outer or inner door or window of a dwelling-house, or other building, or any other enclosure, if, after notice of his office and purpose, he be refused admittance.

Cause of challenge.

SEC. 453. When the sheriff or other officer is guilty of corruption in selecting or empanelling a grand or traverse jury, it is good cause of challenge to any of the jurors so selected or empanelled.

Execution of process

SEC. 454. Every judgment, commitment, and process of the district court must be executed by the sheriff.

Return of criminal for new trial.

SEC. 455. When any criminal in the territorial prison is ordered to be returned to the county where he was convicted to await a new trial, the keeper of the territorial prison must execute the order. The keeper is entitled to such fees therefor as are allowed to the sheriff for taking the convict to the territorial prison.

What the term "person" includes.

SEC. 456. When the term "person" or other word is used to designate the party whose property is the subject of an offence, or against whom any act is done with intent to defraud or injure, the term may be construed to include the United States, this territory, or any other state or territory, or any public or private corporation, as well as an individual.

Definitions in civil actions adopted.

SEC. 457. All the definitions of terms in the act prescribing the rules of pleading and practice in civil actions, are adopted in this act so far as they are applicable.

Return of deposit.

SEC. 458. If money has been deposited instead of bail, and the defendant at any time before the forfeiture thereof shall give sufficient special bail, or shall surrender himself in open court, or to the sheriff, as provided in this act, or be in any manner legally discharged, the clerk shall return the deposit.

Reward for fugitive

SEC. 459. If any person charged with, or convicted of a felony, shall break prison, escape or flee from justice, and abscond or secrete himself, the governor of the territory, may, if he deem it expedient, offer any reward, not exceeding one thousand dollars, for the apprehension and delivery of such person to the custody of such sheriff or other officer as he may direct.

Payment of reward.

SEC. 460. When any person shall apprehend and deliver such fugitive to the proper sheriff or officer, he shall take his certificate of such delivery, and the governor, on the production of such certificate, shall certify the amount of the claim to the auditor of public accounts.

Pardons may be granted upon terms

SEC. 461. In all cases in which the governor is authorized by law to grant pardons, he may grant the same on such conditions, terms and restrictions as he may deem proper, and if the person so pardoned shall violate such conditions, or terms, or disregard such restrictions, the governor shall have the power and it shall be his duty, to revoke such pardon. And such violation of the conditions, terms or restrictions, or any part thereof, shall be considered an escape and fraud, and the governor shall issue his warrant, directed to the sheriff of the county where the person so pardoned may be, commanding him to re-arrest such person and commit him to the penitentiary or prison in which he was confined prior to such pardon, to serve out the balance of the term for which he may have been sentenced. And such sheriff shall receive such fees out of the territorial treasury as are allowed by law to sheriffs for serving warrants and commitments, and the auditor shall draw his warrant on the general fund for such fees on the treasurer, on presentation of a certificate from the governor that the same is correct.

NOTE—Act May 8th, 1873

What time not counted as part of limitation

SEC. 462. When any indictment or prosecution shall be quashed, set aside, or reversed, the time during which the same was pending shall not be computed as part of the time of the limitation prescribed for the offence.

Lien of judgment

SEC. 463. In all cases when a person shall be arrested for any criminal offence, his real estate and mining claims shall be liable for the payment of any judgment imposing any fine or costs upon such person, and such judgment shall be a lien on such real estate or mining claims from the time of such arrest.

Liability of property of sureties

SEC. 464. The real estate and mining claims of all persons who sign or enter into any recognizance for the appearance of any person charged with any criminal offence shall, if such recognizance be forfeited, be liable for the payment of any judgment which may be recovered thereon, and such judgment is hereby declared to be a lien upon such property from the date of such recognizance. Nothing in either of the above sections shall be construed so as to prohibit the issuing of execution and the enforcing the collection thereof out of any other property of the defendants than above enumerated.

No trial of insane persons

SEC. 465. No person shall be tried for any offence while he is insane.

Proceedings if defendant believed to be insane.

SEC. 466. If any defendant, at the time he is arraigned, declares he is insane, or there is reasonable cause for believing he is insane, the court shall institute the same proceedings as is provided when a defendant declares he is insane, when called upon to show why judgment of court should not be pronounced against him.

Tried if sane, not otherwise.

SEC. 467. If the jury find that the defendant is sane, the trial shall proceed; but if insane, the defendant shall be delivered to the custody of the person provided by law for the keeping of the insane, or to the custody of some suitable person.

Same.

SEC. 468. If the person to whose custody such insane person is confided, at any time think he has recovered his reason, he shall bring him into court, and deliver him to the proper officer; and if the court is satisfied that such defendant is sane, the trial shall proceed.

Costs of keeping insane prisoner

SEC. 469. The keeping of an insane defendant, where there is no fund provided by the territory for the keeping of insane persons, shall be at the expense of the county where the offence was committed.

13th ses. p 114.

Summons to indicted corporation.

SEC. 470. When any indictment shall be found against any corporation in any of the courts of this territory, the clerk of such shall issue a summons to be directed to such corporation in its corporate name, commanding such corporation to appear at the said court to answer such indictment, a copy of which said summons shall be served on an officer of said corporation, or upon its attorney designated as the person upon whom service of summons in civil causes may be made, if there be any such in the county where the indictment is found; and if there be no officer or designated attorney in the county where the indictment is found, then upon any managing agent, ticket agent, clerk, cashier, or secretary, freight agent, superintendent, or general business-manager in the county, and if there be none of the above described persons in the county, then upon any of such persons in any county in this territory. Such notice shall be served at least five days before the time at which the said corporation is by said summons required to appear.

13th ses p 114

Service of summons and proceedings.

SEC. 471. When the sheriff or other officer shall return said summons, certifying the service thereof, as hereinbefore provided, the said corporation shall, on and after the day appointed in such summons for its appearance, be considered, if it do not appear, as in court and as appearing to said indictment; and the court shall order the clerk to enter an appearance for said corporation, and endorse the plea of not guilty on said indictment, and enter the same upon the records of the court, and further proceedings may be had thereon as if the said corporation had appeared and pleaded not guilty thereto; and if the said corporation shall be convicted on said indictment, the court may proceed to pass judgment thereon and cause execution to be issued against the goods and chattels, land and tenements of the said corporation for the amount of the fine and costs which may be awarded against it in the same manner as on judgment in civil action, and the sheriff shall proceed to sell the goods and chattels, lands and tenements of the said corporation on the said execution, in the same manner as on an execution issuing against a corporation in a civil suit.

NOTE—Sections 470 and 471, act of March 8th, 1883.

14th ses p. 56. Sentence of hard labor

SEC. 472. In all cases of conviction for felony, hereafter committed, it shall be the duty of the court sentencing any person convicted to attach to the sentence of imprisonment the provision that such imprisonment be at hard labor; and whenever any jury shall have designated in their verdict any term of imprisonment, the same shall be deemed and held to mean imprisonment at hard labor.

Prisoner to have employment

SEC. 473. It shall be the duty of the person or officer having charge of any such prisoner in any prison, penitentiary, jail, or other place of confinement, to furnish labor to such prisoner, and to require of him the performance thereof, in all cases where such labor can be furnished such prisoner within the limits of such place of confinement, or as permitted by the law of the jurisdiction within which such sentence of imprisonment is being carried into effect.

NOTE—Sections 472 and 473, act of March 10th, 1885.

CHAPTER XIX.

PROCEEDINGS IN PROBATE AND JUSTICE OF THE PEACE COURTS.

Sec. 474. Criminal actions before probate or justices' courts, presented by complaint.
Sec. 475. What complaint must specify.
Sec. 476. By whom complaint may be made.
Sec. 477. When complaint filed, warrant to issue.
Sec. 478. Defendant must be present in person on trial.

Sec. 479. How defendant arraigned.
Sec. 480. Time to plead given defendant.
Sec. 481. Defendant entitled to counsel.
Sec. 482. Defendant may correct name in complaint.
Sec. 483. If he give his true name—proceeding
Sec. 484. Defendant may demur, plead, or answer.
Sec. 485. If demurrer be sustained—effect of.
Sec. 486. Defendant may waive jury.
Sec. 487. Defendant may consent to less jury than twelve.
Sec. 488. Waiver or consent entered on minutes.
Sec. 489. Qualifications of jurors.
Sec. 490. Challenges allowed.
Sec. 491. Court to decide law—not charge jury to facts.
Sec. 492. Jury may separate by consent.
Sec. 493. Verdict to be general.
Sec. 494. Verdict delivered publicly to court.
Sec. 495. One of the defendants may be found guilty—others acquitted.
Sec. 496. If more than one defendant tried, jury may agree as to part and disagree as to others—effect of.
Sec. 497. When jury cannot agree, to be discharged.
Sec. 498. Jury may fix punishment in certain cases; on failure of jury, court to affix.
Sec. 499. Court may modify penalty.
Sec. 500. If court tries case to fix penalty.
Sec. 501. When punishmet inadequate—proceeding.
Sec. 502. Trial may be postponed.
Sec. 503. If recognizance not given, defendant committed.
Sec. 504. If recognizance forfeited, to be certified, etc.
Sec. 505. Injured party and material witnesses summoned.
Sec. 506. If offence not cognizable—proceeding as committing magistrate.
Sec. 507. Costs—how paid, if defendant discharged.
Sec. 508. If conviction—judgment of fine and costs.
Sec. 509. Defendant may be discharged after committal.

Sec. 510. Defendant may appeal.
Sec. 511. When appeal taken, proceedings sent to district court.
Sec. 512. If appeal taken on day of trial, witnesses recognized.
Sec. 513. Clerk to enter appeal on docket.
Sec. 514. Costs to abide suit.
Sec. 515. If judgment affirmed or modified—effect of.
Sec. 516. Appeals tried anew in district court.
Sec. 517. Execution to issue unless judgment paid.
Sed. 518. For what execution issued and how returned; costs returned to county if collected after payment by county.
Sec. 519. Penalty for misdemeanor in office under this chapter.
Sec. 520. If case continued witnesses not re-summoned.
Sec. 521. When execution returned.
Sec. 522. Fines collected—when and to whom paid.
Sec. 523. Failure of court to pay over money—penalty.
Sec. 524. Copy of judgment of imprisonment delivered to jailer.
Sec. 525. Causes now pending not affected.
Sec. 526. Prosecuting attorney may except to rulings of court.
Sec. 527. Territory may appeal.
Sec. 528. Manner appeals to be taken.
Sec. 529. If cause reversed in district court—proceeding.
Sec. 530. Prosecutor taxed with costs may appeal.

Complaint.

SEC. 474. All criminal actions in either the probate or justice of the peace courts shall be presented by complaint.

What complaint must specify.

SEC. 475. The complaint must specify the name of the defendant, if it be known to complainant; and if not known, then he may be designated as "John Doe, whose real name is unknown." The complaint must state, generally, the crime of which the defendant is accused, with such particulars of time, place, person, and property as will enable the defendant to understand distinctly the character of the offence complained of, and to answer the complaint.

Complaint; by whom made.

SEC. 476. The complaint may be made by any one having knowledge of the commission of the offence, or by any sheriff, constable, or other peace officer, or by the district attorney. It must be made under oath, when made by the sheriff, constable, or other peace officer, or by the district attorney; he may make oath only that he is informed and believes that the defendant is guilty of the crime charged.

Warrant. SEC. 477. When the complaint is filed, the judge or justice of the peace in whose court the same has been filed shall issue a warrant for the arrest of the defendant, if he be not already in custody.

Presence of defendant. SEC. 478. The defendant must be personally present before the trial can proceed.

Arraignment. SEC. 479. The defendant shall be arraigned by the reading of the complaint to him, and asking him to state his true name.

Time to answer. SEC. 480. When arraigned, the defendant may ask time to plead to or answer the complaint, and the court may grant him, not to exceed twenty-four hours.

Counsel for defendant. SEC. 481. It shall be the duty of the court to inform the defendant that he is entitled to the assistance of counsel, and if he be too poor to employ one himself, the court if he requires it, may appoint some suitable person to act as his counsel.

Name of defendant. SEC. 482. The defendant, if he declare that the name given him in the complaint is not his true name, shall make known what it is, and if he fail to do so, he shall not afterward be allowed to raise the objection that he was not complained of under his true name.

Same. SEC. 483. If he give his true name, the court shall make a minute of the same, and thereafter the case shall proceed in that name.

Demurrer, etc. SEC. 484. The defendant may demur, plead, or answer to the complaint, in the same manner, and for the same reasons, as a defendant may do to an indictment.

New complaint. SEC. 485. If a demurrer to any complaint be sustained for any other cause than that of a want of jurisdiction in the court to hear the offence charged, a new complaint may be made against the defendant.

Waiver of jury trial SEC. 486. The defendant may waive a jury trial, and in that event the court may try the case without the intervention of a jury.

Number of jurors. SEC. 487. The defendant may consent to less jury than twelve; but unless he so consents, that number must be empanelled.

Minute of waiver SEC. 488. Any waiver or consent as to the jury by the defendant, must be made a minute of by the court.

Qualifications of jurors.

SEC. 489. The qualifications of jurors shall be the same as for jurors in trials under indictments.

Challenges.

SEC. 490. The same number of challenges shall be allowed to individual jurors, and the same challenges to the panel, as are allowed in trials under indictments.

Jury not charged

SEC. 491. The court shall decide all matters of law which may arise during the trial, but shall not charge the jury as to questions of fact.

Jury may separate

SEC. 492. By consent of parties, the jury, after it is sworn may separate during the trial, but not after the case is submitted to them.

Verdict.

SEC. 493. The verdict of the jury shall in all cases be general.

Same.

SEC. 494. When the jury have agreed upon their verdict, they shall deliver it publicly to the court, who shall enter, or cause to be entered, the same in the minutes of the court.

Same.

SEC. 495. When two or more persons are complained of in the same complaint, one or more may be found guilty, and the balance not guilty.

Same.

SEC. 496. When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly, and the case as to the rest may be tried by another jury.

Same.

SEC. 497. When a jury cannot, after sufficient deliberation, agree upon a verdict, they may be discharged and a new jury empannelled to try the cause.

Same

SEC. 498. When the punishment provided for any offence is in the alternative, the jury may fix the same; any neglect on their part to do so will not prevent the court from fixing it.

Same

SEC. 499. If the court deem any penalty fixed by the jury erroneous, he shall have the right to modify the same.

When court fixes punishment

SEC. 500. When a case is tried before the court, and defendant found guilty, or the defendant pleads guilty, the court shall fix the punishment.

Proceedings if court not autorized to inflict adequate punishment.

SEC. 501. If the court or jury trying any such case shall be of the opinion that the punishment which the court is authorized to inflict is not adequate to the offence committed, they shall so find, whereupon the court shall recognize the defendant and the witnesses to appear in the district court, in the same manner as peace magistrates are authorized to recognize persons and witnesses for offences committed; and the same proceedings shall be had in such cases in the district court as if the examination had not been had before such a magistrate.

Postponement of trial

SEC. 502. Upon good cause shown by either party, the court may postpone the trial of the cause to a day certain, in which case he shall require the defendant to enter into a recognizance, with sufficient security, conditioned that he will appear before the court at the time and place appointed, then and there to answer the charge alleged against him.

Commitment.

SEC. 503. If the defendant fail or refuse to enter into a recognizance, the court shall commit him to the jail of the county, there to remain until the day fixed for trial, unless recognizance be given in the meantime.

Breach of recognizance.

SEC. 504. In case of the breach of any recognizance entered into as aforesaid, the same shall be certified and returned to the district court, to be proceeded on as recognizances certified to such court by magistrates.

Duty of court as to testimony.

SEC. 505. In all cases arising under this act, it shall be the duty of the court to summon the injured party, and all others whose testimony may be deemed material as witnesses at the trial, and to enforce their attendance by attachment if necessary.

Change of proceedings.

SEC. 506. If, in the progress of any trial under the provisions of this chapter, it shall appear that the accused ought to be put upon his trial for an offence not cognizable before the court, he shall stop all further proceedings before him and proceed as a committing magistrate, in cases cognizable only in the district court.

Costs, by whom paid.

SEC. 507. When proceedings are commenced under the provisions of this chapter, on the information or complaint of the injured party, his name shall be entered by the court on his docket as prosecutor: and if the defendant shall be discharged or acquitted, the costs shall be paid by the county unless the court or jury trying the case shall find that there was no probable cause for the commencement of the same, in which case the prosecutor shall pay the costs, and judgment shall be rendered against him accordingly.

Defendant committed until fine and costs paid

SEC. 508. In all cases of conviction, under the provisions of this chapter, the court shall enter his judgment for the fine and costs against the defendant, and may commit him until the judgment is satisfied, as in cases in the district court.

Discharge of defendant.

SEC. 509. Any defendant committed under the provisions of this chapter may be discharged in the same manner as if he had been committed by the district court.

SEC. 510. Any person convicted under the provisions of this chapter may appeal to the district court, at any time within ten days after judgment is rendered, by entering into recognizance with sufficient security, conditioned that he will appear in the district court on the trial therein, and pay all judgments for fine and costs that may be rendered against him in the district court in such case: *Provided*, Said defendant give notice of his intention so to do, at the time of the rendition of judgment.

Appeal.

SEC. 511. When an appeal is taken, the court shall immediately make a certified transcript of all his proceedings therein, and transmit the same, together with the papers in said cause, to the clerk of the district court.

Transcript.

SEC. 512. When an appeal is taken according to this chapter, on the day of trial the court shall recognize all material witnesses for their appearance at the district court on the trial of such cause.

Witnesses to be recognized.

SEC. 513. The clerk of the district court shall enter the same on the court docket, in its order with other criminal causes; and the same shall be heard at the next term thereafter, unless, for good cause, the same be continued.

Entry on docket

SEC. 514. The costs in both cases shall abide the event of the trial in the district court.

Costs

SEC. 515. If the judgment of the court shall be affirmed or modified, or if, upon trial in the district court, the defendant shall be convicted, and any fine assessed, judgment shall be rendered for such fine and costs, in both courts against the defendant and his securities.

Judgment for fine and costs

SEC. 516. All such cases shall be tried anew, in the district court.

Trial de novo.

SEC. 517. If the judgment in the district court be not paid, execution may issue thereon against the defendant and his securities for the fine and costs aforesaid, which shall be made out of the property of the defendant, if sufficient thereof be found, if not, then out of the property of his securities.

Execution.

SEC. 518. The court shall issue executions for all fines and costs that are not paid in any case before him, which shall be issued, executed, and returned in the same manner as executions issued by justices of the peace, and probate courts, in civil cases. If the county shall have paid the costs in any case, and such costs shall afterward be collected from the defendant, they shall be paid into the county treasury.

Same.

Penalty for failure of duty on part of officer.

SEC. 519. Any justice of the peace, probate court, sheriff, constable, or coroner who shall wilfully neglect or refuse to perform any duty enjoined on him by this chapter, shall be deemed guilty of a misdemeanor in office, and upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars.

Verbal notice to witnesses

SEC. 520. When a trial, under the provisions of this chapter, shall be continued by the court, it shall not be necessary for the court to summon any witnesses who may be present at the continuance, but said court shall verbally notify such witnesses, as either party may require, to attend before him, to testify in the cause, on the day set for the trial, which verbal notice shall be as valid as a summons.

Return of execution

SEC. 521. Any officer charged with the collections of fines, under the provisions of this chapter, shall return the execution to the justice, within thirty days from its delivery to him, and pay over to the justice the money collected thereon, deducting his fees for the collection of the same.

Fines paid to treasurer

SEC. 522. All fines imposed and collected by any court, under the provisions of this chapter, shall be paid by him to the treasurer of the county where the conviction was had, for the use of such county, within thirty days after the receipt of the same, and the justice shall take duplicate receipts therefor, one of which he shall deposit with the county auditor, or officer performing the duties of such office.

Treasurer to prosecute delinquent officer.

SEC. 523. If any court shall fail to pay over such moneys as aforesaid, it shall be the duty of the treasurer of the proper county to prosecute such delinquent justice for the recovery of the same, together with the penalty of twenty per centum thereon, in an action of debt, before any court having jurisdiction thereof.

Copy of judgment given to jailor.

SEC. 524. When a judgment of imprisonment is rendered by a court, a certified copy of the same shall be delivered to the jailer, which shall be sufficient authority for executing the judgment.

Pending action not affected by this act

SEC. 525. This act shall not affect any criminal action pending at the time of the taking effect of the same, but such action shall be made to conform, as near as may be, to the provisions herein contained; otherwise such actions shall be carried on to their final termination, under the laws that were in force at the time of the commencement of the same.

Exceptions by territory.

SEC. 526. The attorney acting for the territory may take exceptions to any ruling of the court, in the same manner as in trials in the district court.

Appeal by territory.

SEC. 527. When the district attorney, or any attorney acting as prosecutor, has taken exceptions to the ruling of the court, in any question of law, the territory may appeal the same to the district court.

Manner of taking appeals

SEC. 528. Appeals to the district court on the part of the territory, from any judgment of the justice's court, or that of the probate court, shall be taken in the same manner as appeals from a judgment of the district court of the supreme court of the territory.

Trial de novo.

SEC. 529. If the district court find that the court below committed any material error in ruling upon any question of law, which materially prejudiced the territory, the judgment of the court below shall be reversed, and the cause set down for hearing in the district court *de novo*.

Appeal by prosecutor.

SEC. 530. When a court or jury find that there was no probable cause for commencing a prosecution, or that the prosecution was malicious, and the court enters judgment, taxing the costs of the prosecution against the prosecutor, the prosecutor may appeal to the district court from such judgment, and the question tried *de novo* in that court, as to whether there was probable cause for the prosecution, or whether or not the same was malicious.

NOTE.—The preceding 530 sections, except where otherwise specially noted, are taken from act of January 12, 1872.

FOURTH DIVISION.

CRIMINAL LAWS.

CHAPTER I.

PERSONS CAPABLE OF COMMITTING CRIMES.

Sec. 1. Essence of crimes.
Sec. 2. How intent manifested.
Sec. 3. Idiots and insane persons.
Sec. 4. An infant defined.
Sec. 5. Counselling infants, idiots, and insane persons.
Sec. 6. Married women acting under influence of husband.
Sec. 7. Husband inducing wife to commit offence.
Sec. 8. Drunkenness not excuse for crime.
Sec. 9. Acts committed by accident or misfortune.
Sec. 10. Persons committing crimes under threats and menaces.
Sec. 11. Persons who induce the commission of crimes by threats, etc., etc.

Ingredients of crime

SEC. 1. In every crime or public offence there must be a union or joint operation of act and intention, or of act and criminal negligence.

Intention.

SEC. 2. The intention is manifested by the circumstances connected with the perpetration of the offence, and the soundness or maturity of the mind of the person committing the act.

Non compos mentis.

SEC. 3. A person who is an idiot or insane, is of unsound mind, and incapable of forming an intention to commit a crime.

Infant

SEC. 4. An infant under the age of fourteen years, unless the contrary be clearly shown, shall be deemed incapable of knowing, sufficiently clearly, the distinction between good and evil to enable him to form the intention of committing a crime.

SEC. 5. Any person counselling, advising, or encouraging an infant under the age of fourteen years, who does not know sufficiently the distinction between good and evil to enable her or him to commit a crime; or an idiot, or insane person, to perpetrate an offence, shall be deemed to have committed the offence himself, and shall suffer the same punishment as though the crime had been perpetrated without the instrumentality of such infant, idiot, or insane person.

Adviser.

SEC. 6. A married woman, while acting under the threats, command, or coercion of her husband, shall not be deemed to have committed any offence not punishable with death.

Married woman.

SEC. 7. If it shall appear from all of the facts and circumstances connected with the commission of any criminal offence, that any man has induced his wife to commit the same, by means of threats, commands, or coercion, he shall be deemed to have committed the offence himself, and shall be punished accordingly.

Same

SEC. 8. Drunkenness shall not be an excuse for any crime, unless such drunkenness shall have been occasioned by the fraud, contrivance, or force of some other person, for the purpose of causing the commission of the offence; in which case, the person causing such drunkenness for the said purpose, shall be deemed to have committed the crime himself, and shall be punished accordingly.

Drunkenness, no excuse, exception

SEC. 9. All acts committed by misfortune or accident, shall not be deemed criminal, where it satisfactorily appears that there was no evil intention or criminal negligence, and that the person performing the same was not, at the time of the commission thereof, engaged in some felonious enterprise.

Misfortune.

SEC. 10. Any person committing a crime, not punishable with death, under threats or menaces, which sufficiently show that his life was in great danger, or that he had reasonable cause for believing, and did believe, that his life was in great danger, shall not be deemed to have committed the crime.

Act committed under threats

SEC. 11. Any person who shall coerce another to commit a crime, by means of threats and menaces, which shall induce the person committing the act to believe and give him reasonable cause for believing his life to be in great danger, shall be deemed to have committed the crime himself, and shall be punished accordingly.

CHAPTER II.

ACCESSORIES.

Sec. 12. Who shall be deemed a principal offender.
Sec. 13. Concealment of offender — Punishment for.

Accessory before the fact

SEC. 12. Any person who stands by and aids, abets, or assists, or who, not being present, hath advised and encouraged the commission of a crime, shall be deemed a principal offender, and shall be punished accordingly.

Accessory after the fact.

SEC. 13. Any person who, after full knowledge that any crime has been committed, conceals the same from any magistrate, sheriff, or other officer of the law, or harbors and protects any person charged with or found guilty of any crime, is an accessory after the fact, and shall be punished by imprisonment in the territorial prison for a term not exceeding two years, and fined in any sum not exceeding five thousand dollars, to be regulated by the circumstances of the case and the enormity of the crime of the principal offender.

CHAPTER III.

WITNESSES.

Sec. 14. Party injured, or jointly concerned, competent witness.
Sec. 15. Defendant may testify.
Sec. 16. Witness may affirm.
Sec. 17. Any person present at a duel made witness.

Party injured may be witness

SEC. 14. The party or parties injured by any criminal act, shall in all cases be competent witnesses; the credibility of the same being left to the jury. In all cases where two or more persons are jointly or otherwise concerned in the commission of any crime or misdemeanor, either of such persons may be sworn as a witness, for or against the other, in relation to such crime or misdemeanor; but the testimony given by such witness shall in no instance be used against himself in any criminal prosecution. Any person may be compelled to testify as in this section provided.

Defendant may be witness.

SEC. 15. Any defendant in a criminal action or proceeding may be allowed to be sworn and testify in his own behalf; in such case the jury, in judging of the credibility of the witness and the weight to be given to his testimony, shall take into consideration the fact that he is the defendant, and the nature and enormity of the crime of which he is accused; the fact that the defendant does not claim the right to be sworn, shall not be used to his prejudice; and the attorney prosecuting shall not comment on the same to the jury or court.

Affirmation.

SEC. 16. The solemn affirmation of witnesses shall be deemed sufficient; a false or corrupt affirmation shall subject the witness to all the penalties and punishments provided for those who commit wilful and corrupt perjury.

Witness to duel

SEC. 17. Any and every person who shall be present at the time of fighting any duel with deadly weapons, either as second, surgeon or spectator, or who shall advise or give assistance to such duel, shall be a competent witness against any person offending against the statute in such case, and may be compelled to appear and give evidence before any justice of the peace, grand jury, or court, in the same manner as other witnesses; but the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person who so testifies.

CHAPTER IV.

OFFENCES AGAINST THE LIVES AND PERSONS OF INDIVIDUALS.

Sec. 18. *Murder—definition of.*
Sec. 19. *Malice—what is.*
Sec. 20. *Malice—when presumed to exist.*
Sec. 21. *Murder of first degree—what deemed.*
Sec. 22. *If in fight, upon previous agreement, death ensue, is murder.*
Sec. 23. *Duelling, if death ensue, murder.*
Sec. 24. *In verdict of murder jury to designate degree.*
Sec. 25. *Penalty for murder.*
Sec. 26. *Manslaughter—definition of.*
Sec. 27. *Voluntary manslaughter—what is.*
Sec. 28. *Involuntary manslaughter—what is.*
Sec. 29. *Penalty for manslaughter.*
Sec. 30. *Party must die within a year and a day.*
Sec. 31. *Where party killing to be tried.*
Sec. 32. *Justifiable homicide—what is.*
Sec. 33. *What sufficient to justify the killing.*
Sec. 34. *As to killing in self defence.*
Sec. 35. *As to justification of officer or private person in killing a person charged with felony while making arrest.*

Sec. 36. Unavoidable necessity may justify homicide.
Sec. 37. Excusable homicide—what is.
Sec. 38. Justifiable or excusable homicide—general clause.
Sec. 39. Homicide appearing justifiable or excusable—accused acquitted.
Sec. 40. Burden of proof.
Sec. 41. As to concealing death of bastard child.
Sec. 42. As to procurement of miscarriage or abortion.
Sec. 43. Challenge or acceptance to fight duel.
Sec. 44. Malicious poisoning.
Sec. 45. Mayhem—what is.
Sec. 46. Rape—what is.
Sec. 47. Essential guilt of rape.
Sec. 48. Age at which person may be convicted of rape; exception.
Sec. 49. Punishment for rape.
Sec. 50. Crime against nature.
Sec. 51. Kidnapping—definition of.
Sec. 52. Kidnapping—what deemed.
Sec. 53. Of an attempt to kidnap.
Sec. 54. As to enticing or decoying out of territory any Indian or colored person.
Sec. 55. Abduction—what deemed.
Sec. 56. Abduction of child.
Sec. 57. Abandonment of child—what deemed.
Sec. 58. Assault—definition of.
Sec. 59. Assault with intent to murder, rape, etc.
Sec. 60. Assault with deadly weapon.
Sec. 61. Assault and battery—definition of.
Sec. 62. Assault and battery with cowhide, etc., using weapon to intimidate.
Sec. 63. Maliciously or negligently poisoning water.
Sec. 64. Of threats, etc., to extort money.
Sec. 65. Ehibiting deadly weapon in threatening or angry manner not in self defence.
Sec. 66. Carrying concealed deadly weapon in any city or town.
Sec. 67. False imprisonment—what is.

Murder

SEC. 18. Murder is the unlawful killing of a human being, with malice aforethought, either expressed or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

SEC. 19. Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

Express malice

SEC. 20. Malice shall be presumed to exist when no considerable provocation appears, or when all the circumstances of the killing show an abandoned or malignant heart.

Presumed malice.

SEC. 21. All murder which shall be perpetrated by means of poison, or lying in wait, torture, or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in the perpetration, or attempt to perpetrate, any arson, rape, robbery or burglary, shall be deemed murder of the first degree; and all other kinds of murder shall be deemed murder of the second degree; and the jury before whom any person indicted for murder shall be tried, shall, if they find such person guilty thereof, designate by their verdict whether it be murder of the first or second degree, except as hereinafter provided.

Degrees of murder.

SEC. 22. If any person, with or without deadly weapons, upon a previous agreement, fight with another, and death ensue to any person in such contest within a year and a day, the person or persons causing such death shall be deemed guilty of murder in the first degree.

Same.

SEC. 23. If any person shall, by previous appointment or agreement, fight a duel with a rifle, shot-gun, pistol, bowie-knife, dirk, small sword, back-sword, or other dangerous weapon, and in so doing shall kill his antagonist, or any person or persons, or shall inflict such wound as that the party or parties injured shall die thereof within one year thereafter, every such offender shall be deemed guilty of murder in the first degree, and, upon conviction thereof, shall be punished accordingly.

Same.

SEC. 24. In all trials for murder the jury shall designate in their verdict the degree of murder of which they find the defendant guilty, except when parties are indicted under either of the two preceding sections.

Degree to be stated in verdict.

SEC. 25. Every person who shall be convicted of murder in the first degree shall suffer the penalty of death by hanging; and every person who shall be convicted of murder in the second degree shall suffer the penalty of imprisonment in the territorial prison for a term of not less than ten years, and which may be extended for life.

Penalty for murder.

Manslaughter.

SEC. 26. Manslaughter is the unlawful killing of a human being, without malice or any mixture of deliberation; it may be voluntary or involuntary.

Voluntary manslaughter.

SEC. 27. Voluntary manslaughter is the killing of a human being by another person upon a sudden heat or passion, caused by a provocation apparently sufficient to make the passion irresistible in a reasonable person. The provocation must be a serious and highly provoking injury, inflicted or attempted to be inflicted upon the person killing, sufficient to excite such an irresistible passion; and the killing must follow so soon after the provocation, that there is not time for the passions to cool; for if there should have been an interval between the provocation given and the killing, sufficient for the voice of reason to be heard, the killing shall be attributed to deliberate revenge, and shall be deemed murder in the first degree.

Involuntary manslaughter.

SEC. 28. Involuntary manslaughter is the killing of a human being by another, without any intention to do so, in the performance of an unlawful act not felonious, or which would not naturally tend to destroy human life; or in the performance of a lawful act, without that due care and caution which every reasonable man should exercise in doing any act which might result in the destruction of human life.

Penalty for manslaughter.

SEC. 29. Every person who shall be convicted of the crime of manslaughter shall be punished by imprisonment in the territorial prison for a period of time not less than one year, nor more than ten years.

Death must occur within year and a day.

SEC. 30. In order to make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke was received, or the cause of death administered, in the computation of which the whole of the day on which the act was done shall be reckoned the first.

Venue.

SEC. 31. If the injury be inflicted in one county and the party die in another county, or without the territory, the accused shall be tried in the county where the act was done, or the cause of death administered. If the party killing shall be in one county and the party killed be in another county, at the time the cause of death shall be administered, the accused may be tried in either county.

Justifiable homicide.

SEC. 32. Justificable homicide is the killing of a human being in necessary self-defence, or in defence of habitation, property, or person against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against any person or persons who manifestly intend and endeavor. in a violent, riotous, or tumultuous manner, to enter the habitation of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein.

Bare fear insufficient.

SEC. 33. A bare fear of any of these offences, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person, and that the party killing really acted under the influence of such fears, and not in a spirit of revenge.

Self-defence.

SEC. 34. If a person kill another in self-defence, it must appear that the danger was so urgent and pressing that in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary; and it must appear, also, that the person killed was the assailant, or that the slayer had, really and in good faith, endeavored to decline any further struggle before the fatal blow was given.

When killing by officer justified

SEC. 35. If an officer in the execution of his office in a criminal case, having legal process, be resisted and assaulted, he shall be justified if he kill the assailant. If an officer or private person attempt to take a person charged with felony, or he or they be resisted in the endeavor to take the person accused, and to prevent the escape of the accused, by reason of such resistance, he or she be killed, the officer or private person so killing, shall be justified; *Provided*, That, such officer or private person, previous to such killing, shall have used all reasonable efforts to take the accused without success; and that from all probability there was no prospect of being able to prevent injury from such resistance, and the consequent escape of such person.

Same.

SEC. 36. Justifiable homicide may also consist in unavoidable necessity without any will or desire, and without any inadvertency or negligence in the party killing. An officer, who, in the execution of public justice, puts a person to death in virtue of a judgment of a competent court of justice shall be justified. The officer must, however, in the performance of his duty, proceed according to the sentence of the law of the land.

Excusable homicide.

SEC. 37. Excusable homicide, by misadventure, is when a person is doing a lawful act, without any intention of killing, yet unfortunately kills another, as where a man is at work with an axe, and the head flies off and kills a by-stander, or where a parent is moderately correcting a child, or a master his servant or scholar, or an officer punishing a criminal, and happens to occasion death, it is only a misadventure, for the act of correcting was lawful; but if a parent or master exceeds the bounds of moderation, or the officer the sentence under which he acts, either in the manner, the instrument, or quantity of punishment, and death ensue, it will be manslaughter, or murder, according to the circumstances of the case.

Other cases

SEC. 38. All other instances which stand upon the same footing of reason and justice as those enumerated shall be considered justifiable or excusable homicide.

Acquittal.

SEC. 39. The homicide appearing to be justifiable or excusable, the person indicted shall, upon his trial, be fully acquitted and discharged.

Burden of proof.

SEC. 40. The killing being proved, the burden of proving circumstances of mitigation, or that justify or excuse the homicide, will devolve on the accused—unless the proof on the part of the prosecution sufficiently manifest that the crime committed only amounts to manslaughter, or that the accused was justified or excused in committing the homicide.

Concealing death of infant.

SEC. 41. If any woman shall endeavor, privately, either by herself, or the procurement of others, to conceal the death of any issue of her body, male or female, which, if born alive, would be a bastard, so that it may not come to light, whether it shall have been murdered or not, every such mother, being convicted thereof, shall suffer imprisonment in the territorial prison for a term not exceeding one year: *Provided, however*, That nothing herein contained shall be so construed as to prevent such mother from being indicted and punished for the murder of such bastard child.

Abortion

SEC. 42. Every person who shall administer or cause to be administered or taken or furnish to another to be taken, any medical substance, or shall use or cause to be used, any instrument whatever with intent to procure the miscarriage of any woman then being with child (unless the same shall be done to save the life of such woman), and shall be convicted thereof, shall be punished by imprisonment in the territorial prison for a term of not less than two years, nor more than five years.

Challenge to duel.

SEC. 43. If any person shall hereafter challenge another to fight a duel with deadly weapons, or in any manner whatever, the probable issue of which might result in the death of either; or if any person shall accept a challenge or agree to fight a duel, every person so offending shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars.

Attempt to kill by poison.

SEC. 44. Every person who shall wilfully and maliciously administer, or cause to be administered to or taken by any person, any poison or other noxious or destructive substance or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by imprisonment in the territorial prison for a term not less than ten years, and which may extend to life.

Mayhem

SEC. 45. Mayhem consists in unlawfully depriving a human being of a member of his or her body, or disfiguring or rendering it useless. If any person shall cut out or disable the tongue, put out an eye, slit the nose, ear, or lip, or disable any limb or member of the body of another, or shall voluntarily, or on purpose, put out an eye or eyes, every such person shall be guilty of mayhem. The crime of mayhem shall be punishable by imprisonment in the territorial prison for a term not exceeding fourteen years.

Rape

SEC. 46. Rape is an act of sexual intercourse accomplished with a female, not the wife of the perpetrator, under either of the following circumstances:

(*a*) Where the female is under the age of fifteen years;

(*b*) Where she is incapable through lunacy, or other unsoundness of mind, whether temporary or permanent, of giving legal consent;

(*c*) Where she resists, but her resistance is overcome by violence or force;

(*d*) Where she is prevented from resisting by threats of immediate and great bodily harm, accompanied by apparent power of execution;

(*e*) Where she is prevented from resisting by an intoxicating narcotic or anesthetic substance, administered by or with the privity of the accused;

(*f*) Where she is at the time unconscious of the nature of the act, and this is known to the accused;

(*g*) Where she submits under a belief that the person committing the act is her husband, and this belief is induced by artifice, pretence or concealment practiced by the accused with intent to induce such belief.

Same.

SEC. 47. The essential guilt of rape consists in the outrage to the person and feelings of the female; any sexual penetration, however slight, is sufficient to complete the crime.

Same

SEC. 48. No conviction for rape can be had against one who was under the age of sixteen years at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact and beyond a reasonable doubt.

Same.

SEC. 49. Any person who shall be convicted for the crime of rape as above defined, shall be imprisoned in the penitentiary for not less than five years, and which may be extended to imprisonment for life.

NOTE.—Sections 46, 47, 48, and 49 are sections 1, 2, 3, and 4, and comprise all of "An act concerning rape," approved March 5, 1887, except section 5 of said act, which is in following words: "Section 46 of the Fourth Division of the Revised Statutes of the Territory of Montana, and all acts and parts of acts in conflict herewith are hereby repealed."

Crime against nature.

SEC. 50. The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the territorial prison for a term not less than five years, and which may extend to life.

Kidnapping.

SEC. 51. Kidnapping is the forcible and unlawful taking or the stealing away of a man, woman, or child from his or her own home.

Same.

SEC. 52. Every person who shall forcibly take or arrest, unlawfully, or steal any man, woman, or child, either white, colored, or Indian, and carry him or her away from his or her home or place of abode, shall be deemed to have committed the crime of kidnapping, and, upon conviction, shall be punished by imprisonment in the territorial prison for a term of not less than one year, nor more than ten years.

Attempt to kidnap.

SEC. 53. Every person who shall forcibly and unlawfully take or arrest any person whomsoever, with an intention to take him or her out of this territory, without having first obtained permission so to do, in accordance with the provisions of law, shall be deemed guilty of an attempt to kidnap, and, upon conviction, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than ten years.

Kidnapping.

SEC. 54. Every person who shall hire, persuade, entice, decoy, or seduce, by false promises, misrepresentations, and the like, any negro, mulatto, or colored person, or Indian, to go out of this territory, or to be taken or removed therefrom for the purpose and with the intent to employ him or her for his or her own use or to the use of another, without the free will and consent of such negro, mulatto, or colored person, or Indian, shall be deemed to have committed the crime of kidnapping, and, upon conviction thereof, shall be punished as in the next preceding section specified.

Abduction.

SEC. 55. Every person who shall take any woman unlawfully against her will, and by force, threats, menaces, or duress, compel her to marry him, or to marry any other person, or to be defiled, shall be deemed to be guilty of the crime of abduction; and, upon conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than two years, nor more than fourteen years.

Kidnapping of child under ten years of age

SEC. 56. Every person who shall maliciously, forcibly, or fraudulently lead, take; or carry away, or decoy or entice away any child under the age of ten years, with intent to detain and conceal such child from the parent, guardian, or other person having the lawful charge of such child, shall, upon conviction thereof, be punished by imprisonment in the territorial prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or by both such fine and imprisonment.

Abandonment of child.

SEC. 57. If any father or mother of any child, under the age of ten years, or any other person to whom such child shall have been confided, shall expose such child in a street, field, or other place, with intent to abandon it, he or she shall, upon conviction, be punished by imprisonment in the territorial prison for a term not less than one year, nor more than five years.

Assault.

SEC. 58. An assault is an unlawful attempt, coupled with a present ability to commit a violent injury on the person of another, and every person convicted thereof shall be fined in a sum not less than five nor more than fifty dollars.

Assault with intent to commit felony

SEC. 59. An assault with intent to commit murder, rape, the infamous crime against nature, mayhem, robbery, or grand larceny, shall subject the offender to imprisonment in the territorial prison for a term not less than one year, nor more than fourteen years.

Assault with deadly weapon

SEC. 60. An assault with a deadly weapon, instrument, or other thing, with an intent to inflict upon the person of another a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant heart, shall subject the offender to imprisonment in the territorial prison not less than one nor more than two years, or to a fine not less than five hundred nor more one thousand dollars, or to both such fine and imprisonment, at the discretion of the court.

13th ses. p. 34.

Assault and battery.

SEC. 61. Assault and battery is the unlawful beating of another; and a person convicted thereof shall be fined in a sum not less than ten not more than one hundred dollars, or imprisonment in the county jail not less than one nor more than three months, or both such fine and imprisonment, at the discretion of the court.

NOTE—Section 61, act of Feb. 7th, 1883.

Assault with intimidation.

SEC. 62. If any person shall assault and beat another with a cowhide, stick, or whip, having at the time in his possession a pistol or other deadly weapon, with an attempt to intimidate and prevent the person assaulted from defending himself, such person shall, on conviction thereof, be imprisoned in the territorial prison not less than one nor more than ten years.

Poisoning water.

SEC. 63. Every person who shall wilfully and maliciously, or negligently poison any spring, well, or reservoir of water, shall, upon conviction thereof, be punished by imprisonment in the territorial prison for a term not less than one nor more than ten years.

Threats for purpose of extortion.

SEC. 64. If any person, either verbally or by any written or printed communication, shall maliciously threaten any injury to the person or property of another, with intent thereby to extort money, or any pecuniary advantage whatever, or to compel the person so threatened to do any act against his or her will, he shall be punished, upon conviction thereof, by imprisonment not more than one year nor less than six months, or by fine not exceeding five hundred dollars, nor less than one hundred dollars, or by both such fine and imprisonment.

14th ses p 74.

Exhibiting deadly weapon or using same unlawfully.

SEC. 65. Every person in this territory having, carrying, or procuring from another person, any dirk, dirk-knife, sword, sword-cane, pistol, gun, or other deadly weapon, who shall, in the presence of one or more persons, draw or exhibit any of said deadly weapons in a rude, or angry, or threatening manner, not in necessary self-defence; or who shall in any manner unlawfully use the same in any fight or quarrel, the person or persons so offending, upon conviction thereof in any criminal court in any county in this territory, shall be fined in any sum not less than ten dollars nor more than one hundred dollars, or imprisonment in the county jail not less than one month nor more than three months, at the discretion of the court, or by both such fine and imprisonment; together with the costs of prosecution, which said costs shall in all cases be computed and collected in the same manner as costs in civil cases; and all fines and forfeitures arising under the provisions of this section shall be paid into the county treasury for school purposes; *Provided*, That no sheriff, deputy sheriff, constable, marshal, or other peace officer, shall be held to answer under the provisions of this section for drawing or exhibiting any of the weapons hereinbefore mentioned while in the law-discharge of his or their duties.

NOTE—Section 65, act of March 12th, 1885

13th ses. p. 62.

Carrying concealed weapons

SEC. 66. It shall be unlawful for any person within the limits of any city, town, or village in this territory, to bear concealed upon his person any dirk, dagger, pistol, revolver, or other deadly weapon. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than ten dollars, nor more than one hundred dollars. This section shall not apply to peace officers in the discharge of their official duties.

NOTE.—Section 66, act of March 5th, 1883

False imprisonment

SEC. 67. False imprisonment is an unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority. Any person convicted of false imprisonment shall pay all damages sustained by the person so imprisoned, and be fined in any sum not exceeding five thousand dollars, or imprisoned in the territorial prison for a term not exceeding one year.

CHAPTER V.

OFFENCES AGAINST HABITATIONS, OTHER BUILDINGS, AND OTHER PROPERTY.

Sec. 68. Arson in first degree—what is.
Sec. 69. Arson in second degree—what is.
Sec. 70. Arson in third degree—what is.
Sec. 71. Maliciously burning standing crop, bridge, etc.—penalty therefor.
Sec. 72. Wilfully burning insured property.
Sec. 73. Burglary generally defined.
Sec. 74. What constitutes burglary in the first degree, and what in the second degree.
Sec. 75. Burglary, how punishable.
Sec. 76. Burglary committed prior to March 10th, 1885, not affected by this amendment.

Arson in first degree.

Sec. 68. Every person who shall wilfully and maliciously burn, or cause to be burned, in the nighttime, any building, boat, or vessel which is inhabited by some human being, and of which he shall have knowledge, or shall have reasonable cause for believing to be so inhabited, shall be guilty of arson in the first degree, and upon conviction thereof, shall be punished by imprisonment for life in the territorial prison, or with death, as the jury may designate.

Arson in second degree.

Sec. 69. Any person who shall wilfully and maliciously burn, or cause to be burned, in the day time, any building, boat or vessel, inhabited by any person, he knowing, or having reasonable cause for believing, such building, boat or vessel to be so inhabited, or shall burn, or cause to be burned, any building or structure attached to the same, with intent to burn such inhabited building, boat or vessel, shall be deemed guilty of arson in the second degree; and shall be punished by imprisonment in the territorial prison for a period of time not less than five years nor more than twenty years.

Arson in third degree.

Sec. 70. Every person who shall wilfully and maliciously burn, or cause to be burned, any uninhabited building, boat or vessel, owned by another, at any time, shall be deemed guilty of arson in the third degree; and, upon conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than three years, nor more than fifteen years.

Other cases of arson

Sec. 71. Every person who shall wilfully and maliciously burn, or cause to be burned, any standing crop, or stack of grain or hay, or any bridge across any stream in this territory, or any dam or flume, or any pile or parcel of wood or lumber, the property of another, shall, upon conviction thereof, be punished by imprisonment in the territorial prison for a term not less than two years, nor more than five years.

Same.

Sec. 72. Every person who shall wilfully burn, or cause to be burned, any building, boat, vessel, goods, wares, merchandise, or any other chattels, which are at the time insured against loss or damage by fire, with intent to injure or defraud the insurer thereof, whether the same be the property of such insured person, or of any other person, shall, upon conviction thereof, be punished by imprisonment in the territorial prison for a term of not less than two years, nor more than ten years.

14th ses p. 50

Burglary

SEC. 73. Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, out-house, or other building, tent, steamboat or rail-car, with intent to commit grand or petit larceny, or any felony, is guilty of burglary.

Degrees of burglary

SEC. 74. Every burglary committed in the night-time is burglary in the first degree, and every burglary committed in the day-time is burglary in the second degree. The phrase, "night time," as used in this section, shall mean the period between sunset and sunrise.

14th ses p 50.

Punishment of burglary.

SEC. 75. Burglary of the first degree is punishable by imprisonment in the territorial prison for not less than two nor more than fifteen years; burglary of the second degree is punishable by imprisonment in the territorial prison for not less than one year nor more than ten years.

As to offences committed prior to March 10, 1885.

SEC. 76. All offences committed under sections 73, 74, and 75, prior to March 10th, 1885, shall be prosecuted and punished in the same manner and with the same effect as if the amendments provided in said sections had not been made.

NOTE.—Sections 73, 74, 75 and 76, act of March 10th, 1885

CHAPTER VI.

OFFENCES AGAINST PROPERTY.

Sec. 77. Robbery—definition of.
Sec. 78. Grand larceny—what is.
Sec. 79. Petit larceny—what is.
Sec. 80. Feloniously stealing a dog deemed petit larceny.
Sec. 81. Negotiable instruments, deeds, etc., subjects to larceny.
Sec. 82. Of persons knowingly buying or receiving property obtained by larceny, or burglary, etc.
Sec. 83. Same.
Sec. 84. Of person bringing to territory property obtained by larceny, burglary, etc. Proceeding.
Sec. 85. Same.
Sec. 86. Of person marking or branding, or altering marks or brands, with intention to steal.
Sec. 87. Of embezzlement or theft by public officer or servant of territory.

Sec. 88. Of officer collecting or receiving public moneys and failing to pay over same, when lawful demand made therefor.
Sec. 89. Of officer of territory converting to his own use, investing, or loaning public moneys, bonds, etc., or person privy thereto.
Sec. 90. Of person defacing or destroying evidence of title, or value, with intent to injure.
Sec. 91. Of persons fraudulently destroying or removing corner or boundary lines
Sec. 92. Larceny by clerk or servant.
Sec. 93. Larceny by bailee.
Sec. 94. Larceny by lodger.
Sec. 95. Of person knowingly driving away stock deemed misdemeanor. Fines therefor —how appropriated.

Robbery

SEC. 77. Robbery is the felonious and violent taking of money, goods, or other valuable things from the person of another by force or intimidation. Every person guilty of robbery shall be punished by imprisonment in the territorial prison for a term not less than five years, and which may be extended to life.

Grand larceny

SEC. 78. Every person who shall feloniously steal, take, and carry away, lead, or drive away the personal goods or property of another, of the value of fifty dollars or more, shall be guilty of grand larceny, and, upon conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than fourteen years. If any person or persons, shall steal, or, with intent to steal, shall take, carry, drive, lead, or entice away any mare, gelding, stallion, colt, foal, or filley, mule or ass, ox, cow, bull, stag, heifer, steer or calf, being the property of another, of whatever value, he or they shall be deemed guilty of grand larceny, and being thereof convicted, shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, and be imprisoned not less than one year nor more than fourteen years, in the territorial prison, and shall be liable to the person, or persons, whose property is so stolen, for the said property, or the value thereof, and any expenses by him, or them, incurred in endeavoring to make reclamation thereof.

NOTE.—Latter part of preceding section, relating to larceny of animals, is from act of February 19, 1879.

Petit larceny.

SEC. 79. Every person who shall feloniously steal, take, and carry away, lead or drive away the personal goods or property of another, under the value of fifty dollars, shall be deemed guilty of petit larceny, and upon conviction thereof shall be punished by imprisonment in the county jail, not more than three months, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment. And the court passing sentence upon any person or persons convicted under this section, may order that such person or persons may be kept on bread and water during all or any portion of his or their imprisonment.

NOTE—Act of Feb. 11, 1876.

Same.

SEC. 80. That every person who shall feloniously steal, take, and carry, lead or drive away any dog, either of the male or female kind, belonging to another, shall be deemed guilty of petit larceny, and, upon conviction thereof, shall be punished by imprisonment in the county jail not more than three months, or by a fine not exceeding one hundred dollars, or by both such fine and imprisonment. In any judgment rendered for a fine only, the judgment shall provide that unless the same be paid the defendant shall be imprisoned in the county jail, at the rate of one day for every two dollars of the fine.

What considered personal goods.

SEC. 81. Bonds, promissory notes, bank notes, bills of exchange, or other bills, orders, drafts, checks, receipts, or certificates, or warrants for or concerning money, goods, or property, due or to become due, or to be delivered, or any public security issued by the United States or by this territory, and any deed or writing containing a conveyance of land or valuable contract in force, or any release or defeasance, or any other instrument whatever, shall be considered personal goods of which larceny may be committed, and the money due thereon, or secured thereby, and remaining unsatisfied, or which, in any event or contingency, might be collected thereon, or the value of the property transferred or effected thereby, as the case may be, shall be deemed the value of the property stolen.

Receiver of stolen property

SEC. 82. Every person who, for his own gain, or to prevent the owner from again possessing his property, shall buy or receive stolen goods, or any kind of property, the stealing of which is declared to be larceny, of the value of fifty dollars or more, or property obtained by robbery, burglary, or embezzlement, of such value, knowing the same to have been so obtained, shall, upon conviction thereof, be punished by imprisonment in the territorial prison for a term not less than one year, nor more than five years, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment. If the value of the goods thus bought or received be of the value of less than fifty dollars, the offender, upon conviction, shall be punished by imprisonment in the county jail not exceeding three months, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment; and every such person may be tried, convicted, and punished before or after the trial of the principal.

Any person or persons, who shall buy any mare, gelding, stallion, colt, foal or filley, mule, or ass, ox, cow, bull, stag, heifer, steer or calf, that shall have been stolen, knowing the same to have been stolen, or any person or persons, who shall conceal or receive, any mare, gelding, stallion, colt, foal or filley, mule or ass, ox, cow, bull, stag, heifer, steer or calf, knowing the same to have been stolen, with intent thereby to defraud the owner; or if any person shall conceal any horse, or cattle-thief, knowing him to be such, with intent to prevent his detection or arrest, every person so offending shall be deemed guilty of concealing a felony, and being thereof convicted, shall be punished by a fine of not less than fifty nor more than three hundred dollars, and be imprisoned not less than one year, nor more than five years in the territorial prison.

NOTE.—The latter part of preceding section, referring to buying or concealing stolen animals, or concealing cattle-thief, is taken from act of February 19th, 1879

Same

SEC. 83. Every receiver of personal property that shall have been feloniously stolen, knowing the same to have been stolen, may be indicted, convicted and punished in any county where he received or had such property, in the same manner that receivers of personal property stolen in this territory are indicted, convicted and punished, notwithstanding such theft was committed in any other state, territory or country.

NOTE —Section 83 is Section 2 of "An Act providing for the punishment of persons having or receiving stolen property in certain cases" Approved February 23d, 1887

Stolen property brought from another jurisdiction.

SEC. 84. Every person bringing any goods or property into this territory, taken by himself, or which he knew was taken by another, in another territory or state, by robbery, burglary, embezzlement or larceny, shall, upon reasonable cause being shown to a magistrate to induce him to believe that the accused has brought such goods or property into this territory, taken in either of the ways aforesaid in another territory or state, be committed to the county jail, to await a requisition from the governor of the territory or state whence such goods or property were brought, as aforesaid, into this territory: *Provided*, That such person shall not be detained in such custody longer than a period of eight weeks.

Same

SEC. 85. That every person who shall feloniously steal the property of another in any other state, territory or country, and shall bring the same into the territory of Montana, may be convicted and punished in the same manner as if such larceny had been committed in this territory, and in every such case such larceny may be charged to have been committed in any county into which or through which such stolen property shall have been brought. *Provided,* That such person may plead a former conviction or acquittal for the same offence in another state, territory or country, and if such plea be admitted or established, it shall be a bar to any further or other proceedings against such person for the same offence.

NOTE—Section 85 is Section 1 of "An act providing for the punishment of persons having or receiving stolen property in certain cases," approved February 23, 1887 The remainder of said act is Section 83 above

Marking or branding property of another with intent to steal

SEC. 86. Every person who shall mark, brand, alter, or deface the mark or brand, of any horse, mare, colt, jack, jennet, mule, or any one or more head of neat cattle or sheep, goats, hogs, shoats, or pigs not his or her own property, but belonging to some other person, or cause the same to be done, with the intent thereby to steal the same, or to prevent identification thereof by the owner, shall, upon conviction thereof, be punished by imprisonment in the territorial prison for a term not less than six months, nor more than five years.

Embezzlement

SEC. 87. Every servant, officer, or person employed in any public department, station, or office of the government of this territory, or any county of this territory, or in any office of a corporate body, who shall embezzle, steal, secrete, or fradulently take or carry away any money, goods, chattels, effects, books, or book of record or of account, bond or bonds, promissory note or notes, bank bill or notes, or any other writing or security for the payment of money, or property, of whatever description it may be, being the property of said territory, county or corporate body, shall, on conviction thereof, be punished by imprisonment in the territorial prison for a period of time not less than one year, nor more than ten years.

Same.

SEC. 88. If any officer who now is or hereafter may be intrusted by law to collect, disburse, or receive or safely keep any money or moneys, revenue or revenues, belonging to this territory, to the school fund of this territory, to the school fund of any county or township of any county in this territory, to any canal, turnpike, or railroad fund of this territory, or any county thereof, or to any fund for the improvement of any public road or roads, river, creek, or other water course, bordering on or within this territory, or to any other fund now being or hereafter to be established by law for public purposes, and who shall fail or refuse to pay over all moneys, warrants, bills, notes, and orders which any such officers or persons shall receive for disbursement, and has not disbursed, or shall collect, or shall receive for safe keeping, belonging to this territory, to any county of this territory, or to any such fund as aforesaid, when such officer or person shall thereto be required by law, and demand duly made by the successor or successors of such officer, or person in office, or by the officer or person to whom such money, warrants, bills, notes or orders ought by law to be paid over, or his or their attorney or agent duly authorized in writing, signed and acknowledged—(if such demand be practicable) —every such officer or person shall, on conviction therefor, be punished by imprisonment in a territorial prison for a term not less than two years, nor more than five years: *Provided*, That no person shall be imprisoned in the territorial prison under this section, unless the money not paid over shall amount to more than one hundred dollars, or if it appear that such failure or refusal shall be occasioned by unavoidable accident or loss. Every person convicted under the provisions of this section shall forever thereafter be disqualified from holding any office of honor, trust, or profit in this territory.

Same

SEC. 89. That if any officer of the territory, or of any county, city, or town in this territory, charged with the safe keeping, transfer, or disbursement of public moneys, shall convert to his own use, in any way whatever, or shall use by way of investment in any kind of property or merchandise, or shall loan, with or without interest, any portion of the public moneys, bonds, or other evidences of indebtedness of the territory, intrusted to him for safe keeping, transfer, or disbursement, or any other purpose, every such act shall be deemed and adjudged to be embezzlement of so much of such moneys as shall be thus taken, converted, invested, used or loaned, which is hereby declared to be felony; and the neglect or refusal to pay over on demand any public moneys in his hands, upon the presentation of draft or order, or warrant, drawn upon him by the proper officer, or any officer authorized by law, and signed by such officer, or to transfer or disburse any such moneys promptly, according to law, on the legal requirement of any officer authorized to make such requirement, shall be *prima facie* evidence of such conversion to his own use of the public moneys that may be in his hands. All persons advising, or knowingly or willfully participating in such embezzlement, shall, upon conviction receive the same punishment as the principal offender, and may be tried, convicted and punished before the original or principal offender shall have been apprehended. All persons offending against the provisions of this section shall, upon conviction, be punished by imprisonment in the territorial prison for a term not less than two nor more than ten years, and adjudged, at the discretion of the court, to pay a fine equal to the amount embezzled.

Destruction of evidence of debt, etc.

SEC. 90. Every person who shall fraudulently or maliciously tear, burn, efface, cut, or in any way destroy any debt, lease, bond, will, or any other writing sealed, or any bank bill or note, check, warrant, or certificate for the payment of money or other thing, or the delivery of goods, or any certificate or other public security of this territory, or of the United States, or any state or territory, for the payment of money, or any receipt, acquittance, release or defeasance, discharge of any debt, suit, or other demand, or any transfer or assurance of money, stock, goods, chattels, or other property, or any letter of attorney, or other power, or any day-book, or other book of account, or any agreement or contract whatsoever, with intent to defraud, prejudice, or injure any person or body corporate, shall, upon conviction thereof, be punished by imprisonment in the territorial prison for a term not less than one year nor more than five years.

Removal of boundary marks, etc

SEC. 91. Every person who shall wilfully or maliciously remove any monument of stone, wood, or other durable material, erected for designating the corner, or other point, or any post or stake fixed or driven into the ground for the purpose of designating a point in a boundary of any lot or tract of land, or alter the marks on any tree, post, or other monument, made for the purpose of designating any point, course, or line in the boundary of any lot or tract of land, or shall cut down or remove any tree upon which any such marks shall be made for such purpose, with the intent to destroy such marks, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by a fine not less than one hundred nor more than two thousand dollars, or by imprisonment in the county jail for a term not less than one month, nor more than one year.

Embezzlement by clerk, etc.

SEC. 92. If any clerk, apprentice, or servant, or any other person, whether bound or hired, to whom any money or goods or chattles or other property shall be entrusted by his master or employer, shall withdraw himself from his master or employer, and go away with the money, goods, chattels, or other property, or any part thereof, with intent to steal the same and defraud his master or employer thereof, contrary to the trust and confidence in him reposed by his said master or employer, or being in the service of his said master or employer shall embezzle the said money, goods, or chattels, or property, or any part thereof, or otherwise shall convert the same to his own use, with like purpose to steal the same, every person so offending shall be punished in the manner prescribed by law for feloniously stealing property of the value of the articles so taken, embezzled, or converted.

Conversion by bailee

SEC. 93. If any bailee of any money, goods, or property shall convert the same to his own use, with intent to steal the same, he shall be guilty of grand or petit larceny, according to the amount of the money or value of the goods, chattels, or property so converted, in the same manner as if the original taking had been felonious, and, on conviction thereof, shall be punished accordingly.

Larceny by lodger.

SEC. 94. If any lodger shall take away, with intent to steal, embezzle or purloin, any bedding, furniture, goods, or chattels, which he is to use in or with his lodging, he shall be deemed to be guilty of grand or petit larceny, according to the value of the property so taken, and, on conviction, shall be punised accordingly.

Driving stock from range.

SEC. 95. Every drover or other person or persons who shall drive off, or who shall knowingly or willingly suffer or permit to be driven off, from the premises of any resident of this territory, or from the range on which the stock of any such resident usually use and run, any horses, mules, neat cattle, hogs, sheep, or any other stock belonging to any such resident, with his herd or drove, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by imprisonment in the county jail not to exceed one month, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment. All moneys collected under the provisions of this section shall be paid into the school fund of the county in which the offence is committed.

CHAPTER VII.

FORGERY AND COUNTERFEITING.

Sec. 96. Forgery—what is.
Sec. 97. Counterfeiting—what deemed.
Sec. 98. Of any person having in his possession counterfeit money, with intention to pass same.
Sec. 99. Of person counterfeiting private stamps.
Sec. 100. Of person knowingly selling goods with forged or counterfeit stamps thereon.
Sec. 101. Of person having in possession or receiving forged promisory note, etc., with intent to pass same.
Sec. 102. As to person having in possession or making check, etc., on corporation not in existence, with intent to pass same.
Sec. 103. Of person with evil intent making or having in possession dies or plates used in counterfeiting.
Sec. 104. Of proof of corporation on trial for forgery.
Sec. 105. Experts competent witnesses.
Sec. 106. As to counterfeiting seal of territory or of any court.
Sec. 107. As to counterfeiting gold dust, bullion, etc.
Sec. 108. Person having in possession counterfeit gold dust, bullion, etc., knowing same to be counterfeit, with intent to pass same.

Forgery

Sec. 96. Every person who shall falsely make, alter, forge, or counterfeit any record or other authentic matter of a public nature or character, letters-patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promisory note, due bill for the payment of money or property, receipt for money or property, power of attorney, any auditor's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing or receipt for money or goods, or any acquittance, release, or discharge of any debt, account, suit, action, demand, or other thing, real or personal, or any transfer of assurance of money, stock, goods, chattels, or other property whatever, or any letter of attorney or other power to receive money, or to receive or transfer stock or annuities, or to let, lease, dispose of, alien, or convey any goods or chattels, lands or tenements, or other estate, real or personal, or any acceptance or endorsement of any bill of exchange, promissory note, draft, order, or assignment of any bond, writing, obligatory, or promissory note for money or other property, or shall counterfeit or forge the seal or handwriting of another, with an intent to damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in or belong to this territory or not, or shall utter, publish, pass, or attempt to pass, as true and genuine, any of the above named false, altered, forged or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged or counterfeited, with intent to prejudice, damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in this territory or not, every person so offending shall be deemed guilty of forgery, and upon conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than fourteen years

Counterfeiting

SEC. 97. Every person who shall counterfeit any of the species of gold or silver coin now current, or that shall hereafter be current in this territory, or shall pass or give in payment such counterfeit coin, or permit, cause, or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeited, shall be deemed guilty of counterfeiting, and upon conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than fourteen years.

Uttering or passing counterfeit.

SEC. 98. Every person who shall have in his possession, or receive for any other person, any counterfeit gold or silver coin, or coins of the species now current or hereafter to be current in this territory, with intention to utter or pass the same, or permit, cause, or procure the same to be uttered, or passed, with intent to defraud any person or persons, body politic or corporate, knowing the same to be counterfeited, and being thereof duly convicted, shall be punished by imprisonment in the territorial prison for a term not less than one year nor more than fourteen years.

Forging or counterfeiting private stamp or label

SEC. 99. That every person who shall knowingly and wilfully forge or counterfeit, or cause or procure to be forged or counterfeited, upon any goods, wares, or merchandise, the private stamps or labels of any mechanic or manufacturer, with intent to defraud the purchasers or manufacturers of any goods, wares or merchandise whatsoever, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a term not exceeding six months, or by a fine not less than three hundred nor more than six hundred dollars.

Selling goods bearing forged stamps or label

SEC. 100. That any person who shall sell any goods, wares or merchandise, having thereon any forged or counterfeited stamps or labels, purporting to be stamps or labels of any mechanic or manufacturer, knowing the same to be forged or counterfeited, without disclosing the fact to the purchaser, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a term not exceeding six months, or by a fine not less than three hundred nor more than six hundred dollars.

Having possession of forged paper.

SEC. 101. Every person who shall have in his possession, or shall receive from any other person, any forged promissory note or notes, or bank bill or bills, for the payment of money or property, with intention to pass the same, or procure the same to be uttered or passed, with intent to defraud any person or persons, body politic or corporate, whether such person or persons, body politic or corporate, reside in or belong to this territory or not, knowing the same to be forged or counterfeited, or shall have and keep in his possession any blank or unfinished note or bank bill made in the form or similitude of any promissory note or bill for payment of money or property, made to be issued by any incorporated bank or banking company, with intention to fill up and complete such blank and unfinished note or bill, or to permit or cause, or procure the same to be filled up and completed, in order to utter or pass the same, or to permit or cause or procure the same to be uttered and passed, to defraud any person or persons, body politic or corporate, whether in this territory or elsewhere, shall on conviction thereof, be punished by imprisonment in the territorial prison for a term not less than one year nor more than fourteen years.

Uttering or passing forged paper

SEC. 102. Every person who shall make, pass, utter or publish, with an intention to defraud any other person or persons, body politic or corporate, either in this territory or elsewhere, or with the like intention shall attempt to pass, utter or publish, or shall have in his possession with the intention to utter, pass or publish, any fictitious bill, note or check, purporting to be the bill, note or check, or other instrument in writing for the payment of money or property of some bank corporation, co-partnership, or individual, when in fact there shall be no such bank, co-partnership or individual in existence, the said person knowing the said note, bill, check or instrument in writing for the payment of money or property to be fictitious, shall be deemed guilty of forgery, and, on conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one nor more than fourteen years.

Having possession of dies, etc., for counterfeiting.

SEC. 103. Every person who shall, with evil intent, make or knowingly have in his possession, any die or dies, plate or plates, or other thing whatever, made use of in counterfeiting the coin now made current, or hereafter to be made current in this territory, or in counterfeiting bank notes or bills, upon conviction thereof shall be punished by imprisonment in the territorial prison for a term not less than one year nor more than fourteen years. All such dies, plates, apparatus, paper, metal or machine, intended for the purposes aforesaid, shall be destroyed under the order of the court.

Proof of corporation by reputation.

SEC. 104. On the trial of any person for forging any bill or note, purporting to be the bill or note of some incorporated company or bank, or for passing or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it shall not be necessary to prove the incorporation of such bank, or company by the charter or act of incorporation, but the same may be proved by general reputation.

Expert witnessess.

SEC. 105. Persons of skill shall be competent witnesses to prove that such bill or note is forged or counterfeited.

Forging seal.

SEC. 106. Every person who shall fraudulently forge or counterfeit the seal of this territory, or the seal of any court or public officer by law entitled to have and use a seal, or seal of any corporation, and shall make use of the same, or shall forge or counterfeit the signature of any public officer or seal of any corporation, or shall unlawfully and corruptly, and with evil intent, affix any of the true seals to any commission, deed, warrant, pardon, certificate, or other writing, or who shall have in his possession or custody any such counterfeit seal, and shall wilfully conceal the same, knowing it to be falsely made and counterfeit, and shall thereof be convicted, shall be punished by imprisonment in the territorial prison for a term not less than one year nor more than fourteen years.

Counterfeiting gold dust

SEC. 107. If any person shall counterfeit any kind or species of gold dust, or silver or gold bullion or bars, lumps, pieces, or nuggets of gold or silver of any description whatever, of uncoined gold or silver, currently passing in this territory, or shall utter or put off any kind of uncoined gold or silver mentioned in this section, for the purpose of defrauding any person or persons, body politic or corporate, or shall make any instrument for counterfeiting any kind of uncoined gold or silver, as aforesaid, knowing the purpose for which said instrument was made, or shall knowingly have in his possession, and secretly keep any instrument for the purpose of counterfeiting any kind of uncoined gold or silver, as aforesaid, every such person so offending shall be deemed guilty of counterfeiting, and, upon conviction thereof, shall be punished by imprisonment in the territorial prison for a term of not less than one year, nor more than fourteen years.

Having possession of counterfeit gold dust

SEC. 108. Every person who shall have in his possession, or receive for any other person, any counterfeit gold dust, silver or gold bullion or bars, lumps, pieces, or nuggets of gold or silver, of any description whatever, of uncoined gold or silver currently passing in this territory, or entering in anywise into the circulating medium of this territory, with the intention to pass, utter, or put off the same, or permit, cause, or procure to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than fourteen years.

CHAPTER VIII.

CRIMES AND OFFENCES AGAINST PUBLIC JUSTICE.

Sec. 109. Perjury—what deemed.
Sec. 110. Persons procuring conviction and execution of innocent party by perjury, guilty of murder.
Sec. 111. Bribery—what is deemed.
Sec. 112. As to bribery—penalty.
Sec. 113. Of attempt to commit the act of bribery.

Sec. 114. Of officer stealing, falsifying, or avoiding records, etc.
Sec. 115. Of sheriff or jailer guilty of inhumanity to prisoner.
Sec. 116. Officer retiring from office, withholding, mutilating, or destroying records, papers, etc.
Sec. 117. Falsely personating another.
Sec. 118. Falsely personating another and receiving money, property, etc.
Sec. 119. Wearing badge of society.
Sec. 120. Resisting or obstructing an officer.
Sec. 121. Rescuing criminal subject to death penalty or imprisonment in penitentiary.
Sec. 122. Rescuing person charged with capital offence, penitentiary offence, or misdemeanor.
Sec. 123. Officer releasing prisoner unlawfully.
Sec. 124. Furnishing convict with tools to aid escape.
Sec. 125. Rescuing one in lawful custody.
Sec. 126. Aiding prisoner to escape.
Sec. 127. Officer voluntarily allowing prisoner to escape. Negligence in allowing escape.
Sec. 128. Officer refusing to receive or arrest criminal.
Sec. 129. Compounding a misdemeanor.
Sec. 130. Attempt to bribe juror.
Sec. 131. Juror accepting bribe.
Sec. 132. Of conspiracy.
Sec. 133. Falsely exercising duties of an officer.
Sec. 134. Officer exacting or receiving more than legal fees.
Sec. 135. Justice or constable purchasing judgment.
Sec. 136. As to selling an office.
Sec. 137. Threats against character, person, or property, to exact money.
Sec. 138. Opening sealed letter without authority.
Sec. 139. Officer neglecting duties, in issuing venire or summoning jurors.
Sec. 140. Officer falsely signing jurats.

Perjury and subornation of perjury.

SEC. 109. Every person having taken a lawful oath, or made affirmation in any judicial proceeding, or in any other matter where, by law, an oath or affirmation is required, who shall swear or affirm, wilfully, corruptly, and falsely, in a matter material to the issue or point in question, or shall suborn any other person to swear or affirm as aforesaid, shall be deemed guilty of perjury, or subornation of perjury, as the case may be, and, upon conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than fourteen years.

When perjurer guilty of murder.

SEC. 110. Every person who, by wilful and corrupt perjury, or subornation of perjury, shall procure the conviction and execution of any innocent person, shall be deemed guilty of murder in the first degree.

Bribery.

SEC. 111. If any person or persons shall, directly or indirectly, give any sum of money, or any other bribe, present, or reward, or any promise, contract, obligation, or security for the payment or delivery of any money, present, reward, or any other thing, to obtain or procure the opinion, judgment or decree of any judge or justice of the peace, acting within this territory, or to corrupt, induce, or influence such judge or justice of the peace to be more favorable to one side than the other, in any suit, matter, or cause pending or to be brought before him or them; or shall directly or indirectly give any sum of money, present, or reward, or any promise, contract, obligation, or security for the payment or delivery of any money, present, or reward, or any other thing, to obtain, procure, or influence any member of the legislative assembly, or to incline, induce, or influence any such member of the legislative assembly to be more favorable to one side than the other on any question, election, matter, or thing pending to be brought before the legislature, or either house thereof, the person so giving any money, bribe, present, or reward, promise, contract, obligation or security, with intent, and for the purpose aforesaid, and the judge, justice of the peace, or member of the legislative assembly who shall accept or receive the same, shall be deemed guilty of bribery, and, on conviction, shall be punished by imprisonment in the territorial prison for a term not less than one year, and shall be disqualified from holding any office of honor, trust, or profit in this territory.

Same

SEC. 112. If any person shall, directly or indirectly, give any sum of money, or any other bribe, present, or reward, or any promise, contract, or security for the payment of any money, present or reward, or any other thing, to any judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney general, district or county attorney, member of the legislative assembly, or other officer, ministerial or judicial, or assessor (but such fees as are allowed by law), the person so giving and the officer so receiving any money, bribe, present, reward, promise, contract, obligation, or security, shall be deemed guilty of bribery, and, on conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one year, not more than ten years, and shall be disqualified from holding any office of honor, trust, or profit in this territory.

Attempt to bribe, offer to receive bribe.

SEC. 113. Every person who shall offer or attempt to bribe any member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney general, district or county attorney, or other ministerial or judicial officer, or assessor, in any of the cases mentioned in the preceding sections; and every member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney general, district or county attorney, or other ministerial or judicial officer, or assessor, who shall propose or agree to receive a bribe, in any of the cases mentioned in either of the two preceding sections, shall, on conviction, be imprisoned in the territorial prison for a term not less than five years, nor more than ten years, and shall be disqualified from holding any office of honor, trust, or profit in this territory.

Embezzlement, etc. of record, etc

SEC. 114. If any judge, justice of the peace, sheriff, coroner, clerk. recorder, or other public officer or assessor, or any person whosoever, shall steal, embezzle, corrupt, alter, withdraw, falsify, or avoid any record, process, charter, gift, grant, conveyance, bond, or contract, or shall knowingly and wilfully take off, discharge, or conceal any issue, forfeited recognizance, or other forfeiture, or shall forge, deface, or falsify any document or instrument recorded, or any registered acknowledgement or certificate, or shall alter, deface, or falsify any minute, document, book, or any proceeding whatever, of or belonging to any public officer in this territory, the person so offending, and being thereof duly convicted, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than ten years, and be fined in any sum not exceeding five thousand dollars.

Inhumanity or oppression to prisoner.

SEC. 115. Every sheriff or jailor or person who shall be guilty of wilful inhumanity or oppression to any prisoner under his care as custody, shall be fined in any sum not exceeding two thousand dollars, and shall be removed from office, and, upon conviction thereof, the court before whom the cause may be tried shall enter a judgment removing him from any office he may hold.

Withholding official documents from successor.

SEC. 116. If any officer whose office shall be abolished by law, or who, after the expiration of the time for which he may be appointed or elected, or after he shall have resigned, or been legally removed from office, shall wilfully and unlawfully withhold or detain from his successor, or other person entitled thereunto by law, the records, papers, documents, or other writing appertaining or belonging to his office, or mutilate or destroy or take away the same, the person so offending shall, on conviction, be punished by imprisonment in the territorial prison for a term not less than one year, nor more than ten years. The provisions of this section shall apply to any person who shall have such records, documents, papers, or other writings in his, her, or their possession, and shall wilfully mutilate, destroy, withhold, or detain the same, as aforesaid.

False impersonation of another.

SEC. 117. Every person who shall falsely represent or personate another, and in such assumed character shall marry another, become bail or security for any party in any proceeding, civil or criminal, before any court or officer authorized to take such bail or surety, or confess any judgment, or acknowledge the execution of any conveyance of real estate, or any other instrument which by law may be recorded, or do any other act in the course of any suit, proceeding, or prosecution, whereby the person so represented or personated may be made liable in any event to the payment of any debt, damages, costs, or sums of money, or his right or interest may in any manner be affected, shall, upon conviction, be punished by imprisonment in the territorial prison for a term not less than one year, nor exceeding two years, or by fine not exceeding five thousand dollars.

Same.

SEC. 118. Every person who shall falsely represent or personate another, and in such assumed character, shall receive any money or valuable property of any description, intended to be delivered to the person so personated, shall, upon conviction, be punished in the same manner, and to the same extent, as for feloniously stealing the money or property so received.

Wearing badge of society

SEC. 119. Any person who shall willfully wear the badge of the Grand Army of the Republic, Knights of Labor, or any other society, or who shall use or wear the same to obtain aid or assistance thereby within this territory, unless he be entitled to use or wear the same under rules and regulations of the department of Montana Grand Army of the Republic or rules and regulations of any other society, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment of a term not to exceed thirty days in the county jail or by a fine not to exceed twenty dollars, or by both fine and imprisonment.

NOTE.—Section 119 is Section 1 of "An Act to prevent persons from unlawfully using or wearing the badges of the Grand Army of the Republic, Knights of Labor or any other society in this Territory". Approved March 10, 1887. Section 2 of said Act is as follows: "Sec. 2. This Act shall take effect from and after its passage"

Resisting officer.

SEC. 120. If any person shall knowingly and wilfully obstruct, resist, or oppose any sheriff, deputy sheriff, coroner, constable, marshal, policeman, or other officer of this territory, or other person duly authorized, serving or attempting to serve any law process or order of any court, judge, or justice of the peace, or any other legal process whatsoever, or shall assault or beat any such officer or person, duly authorized, in serving or executing or attempting to serve or execute any order or process as aforesaid, or for having served or executed, or attempting to serve or execute the same, every person so offending shall be fined in any sum not exceeding five thousand dollars, and imprisonment in the territorial prison for a term not less than one year, nor more than five years; *Provided*, Any officer or person that may assault or beat any individual, under color of his commission or authority, without lawful necessity so to do, shall, on conviction, suffer the same punishment.

Setting at liberty or rescuing prisoner after conviction.

SEC. 121. If any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is death, such person, on conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than fourteen years; and if any person or persons set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is imprisonment in the territorial prison, or in prison, the person so offending, on conviction thereof, shall be sentenced to the same punishment that would have been inflicted on the person so set at liberty or rescued.

Setting at liberty or rescuing prisoner before conviction

SEC. 122. If any person shall set at liberty or rescue any person, who, before conviction, stands charged or committed for any capital offence, or any crime punishable in the territorial prison, such person so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars, and imprisoned in the territorial prison not less than one year, nor exceeding ten years; and if the person rescued or set at liberty stands charged, committed, or convicted of any misdemeanor or other offence punishable by fine or imprisonment, or both, the person convicted of such rescue or setting at liberty shall suffer the same punishment that would have been inflicted on the person rescued or set at liberty, if he or she had been found guilty.

Officer permitting escape of prisoner

SEC. 123. If any sheriff, deputy sheriff, or jailer, or any person employed by them as a guard, shall fraudulently contrive, procure, aid, connive at, or otherwise voluntarily suffer the escape of any convict in custody, every such person, on conviction, shall be punished by imprisonment in the territorial prison not less than one year, nor more than ten years, and fined in a sum not exceeding ten thousand dollars.

Carrying to convict means of escape.

SEC. 124. If any person shall carry to any convict imprisoned or in custody, or into any county jail or other place where such convict may be confined, any tool, weapon, or other aid, with intent to enable such convict to escape such custody or confinement, whether such escape be effected or not, any person so offending, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or imprisonment in the territorial prison not less than one year, nor more than five years.

Rescue of person in custody.

SEC. 125. If any person or persons shall rescue another in lawful custody, on civil process, such person or persons shall, on conviction, be fined in any sum not exceeding one thousand dollars.

Aiding prisoner to escape

SEC. 126. If any person shall aid or assist a prisoner lawfully imprisoned or detained in custody, for any offence against this territory, or who shall be lawfully confined by virtue of any civil process, to make his or her escape from imprisonment or custody, though no escape be actually made; or if any person shall convey or cause to be delivered to such prisoner any disguise, instrument, or arms proper to facilitate the escape of such prisoner, any person so offending, although no escape or attempt to escape be actually made, shall, on conviction, be punished by a fine not exceeding five thousand dollars, and imprisoned in the territorial prison not less than one year, nor more than five years.

Permitting prisoner to escape.

SEC. 127. If any sheriff, coroner, jailer, keeper of a prison, constable, or other officer or person whatever, having any prisoner in his legal custody, before conviction, shall voluntarily suffer or permit such prisoner to escape or go at large, every such officer or person so offending shall be fined in any sum not exceeding five thousand dollars, and imprisoned in the territorial prison not less than one year nor exceeding ing five years: *Provided*, That if such person be in custody charged with murder or other capital offence, then such officer of person suffering or permitting such escape shall be punished by imprisonment in the territorial prison for any term not less than one year, nor more than ten years. A negligent escape of a criminal charged with a criminal offence, before conviction, from the custody of any of the aforesaid officers, shall be deemed a misdemeanor, and shall be punished by imprisonment in the territorial prison for a term not less than one year nor more than five years, or shall be fined in a sum not less than one thousand nor more than five thousand dollars.

Officer refusing to receive or arrest accused person

SEC. 128. If any sheriff, coroner, keeper of a jail, constable or other officer shall wilfully refuse to receive, or arrest any person charged with a criminal offence, such sheriff, coroner, jailer, constable or other officer so offending, shall, on conviction, be fined in any sum not less than one thousand nor more than five thousand dollars, and imprisoned in the territorial prison not exceeding five years.

Compounding.

SEC. 129. Every person having a knowledge of the actual commission of any offence punishable by imprisonment in a county jail, or by fine, or of any misdemeanor or violation of any statute, for which any pecuniary or other penalty is or shall be prescribed, who shall take any money, property, gratuity or reward, or any engagement or promise therefor, upon any agreement or understanding, expressed or implied, to compound or conceal any such offence or misdemeanor, or to abstain from any prosecution thereof, or to withhold any evidence thereof, shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail not more than six months: *Provided*, That this section shall not apply to those offences which may be lawfully compromised by leave of the court.

Embracery

SEC. 130. Every person who shall, directly or indirectly, promise or offer to any juror, or procure any juror to take, money or other bribe, present or reward, or shall make or offer to make, any contract, obligation, or give any security for the payment or delivery of money, present, reward or other thing, to any juror, in order to influence him to favor one side of a cause in which he may be empanelled; or shall, by means of threats or menaces, or corruptly, or in any other manner influence or attempt to influence any juror to favor one side of any cause, shall be deemed guilty of embracery; and, upon conviction thereof, shall be fined in any sum not exceeding five thousand dollars, and imprisonment in the territorial prison not less than one year nor more than five years; or by both such fine and imprisonment.

Same.

SEC. 131. Any juror who shall take any money, reward, present, or any other thing to induce him to favor any side of a cause, or shall be influenced corruptly in rendering his verdict in any cause by any means whatever, shall be fined in any sum not exceeding five thousand dollars, and shall be imprisoned in the territorial prison not less than one year nor more than five years; and this section shall apply as well to grand as to trial jurors.

Conspiracy.

SEC. 132. If two or more persons shall conspire, either to commit any offence, or falsely and maliciously to indict another for any offence, or to procure another to be charged or arrested for any such offence, or falsely to move or maintain any suit, or to cheat or defraud any person of any property, by any means which, if executed, would amount to a cheat, or to obtain money or property by false pretence, or to cheat or defraud any person of any property by any means which are in themselves criminal, or to commit any act injurious to the public health, to public morals, or to trade or commerce, or for perversion or obstruction of justice or due administration of the laws, they shall, on conviction, be punished by imprisonment in the county jail not more than six months, or by a fine of not more than one thousand dollars; *Provided*, That it shall not be necessary to procure conviction under this section, to prove any overt act done in pursuance of such conspiracy.

Unlawfully officiating in place of another.

SEC. 133. If any person shall wilfully take upon himself to exercise or officiate in any office or place of another, in this territory without being lawfully authorized thereto, he shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars.

Extortion.

SEC. 134. If any judge, justice of the peace, sheriff, coroner, constable, clerk, or other officer or assessor of this territory, ministerial or judicial, shall wilfully receive or take any fee or reward to do or execute his duty as such officer, except such as is or shall be allowed by law; or if any such officer shall wilfully or corruptly ask or demand, as a condition precedent to the performance of his duties as such officer, any fee or reward, except such as shall be allowed by law, every such officer so offending shall be deemed guilty of extortion, and, on conviction, shall be fined in any sum not less than two hundred dollars, and not more than one thousand dollars, and, on conviction, removed from office.

Purchase of judgment by justice or constable

SEC. 135. If any justice of the peace, constable of the same township, shall, directly or indirectly, purchase any judgment or part thereof, on the docket of such justice, or any docket in his possession, he shall, upon conviction thereof, be fined in each offence in any sum not less than one hundred dollars, nor more than one thousand dollars.

Granting official authority to another.

SEC. 136. Every person holding or receiving any office under the laws of this territory, who shall, for any reward or gratuity, paid or agreed to be paid, grant to another the right or authority to discharge any of the duties of such office, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum not exceeding five thousand dollars, and shall forfeit his office, and be disabled from holding such office, and every person who shall give, or make any agreement to give, any reward or gratuity in consideration of any such grant or deputation, shall, upon conviction, be fined in any sum not less than five hundred nor exceeding five thousand dollars.

Extortion by threats.

SEC. 137. If any person shall knowingly send or deliver any letter or writing, threatening to accuse another of a crime or misdemeanor, to expose or publish any of his infirmities or failings, with intent to extort money, goods, chattels, or other valuable things, or threatening to maim, wound, kill, or murder, or to burn or destroy his house or other property, or to accuse another of a crime or misdemeanor, or to expose or publish any of his infirmities, though no money, goods, chattels, or valuable thing be demanded, such person so offending shall, on conviction, be fined in any sum not exceeding five hundred dollars, and imprisoned in the county jail not exceeding six months.

Meddling with mail of another

SEC. 138. Every person who shall wilfully open or read or cause to be read any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter, or by the person to whom it is addressed, and every person who shall maliciously publish the whole or any part of such letter, without the authority of the writer thereof, or of the person to whom the same was addressed, knowing the same to have been opened, shall, upon conviction, be punished by a fine not exceeding one thousand dollars, nor less than fifty dollars.

Neglect of official duty

SEC. 139. If any officer of this territory, or county thereof, shall wilfully or negligently fail to perform his duties as required by law, in drawing or issuing venires, or in summoning jurors, both grand and trial, as required by law, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than five hundred dollars.

14th ses p. 30.

False certificate to jurat or acknowledgment

SEC. 140. If any officer or officers within the limits of the Territory of Montana shall sign any jurat, purporting to be a certificate that any other person has taken or subscribed before him an oath, without actually administering to such person such oath, or shall sign any such jurat or certificate in blank, or shall sign any acknowledgment of an instrument or conveyance, purporting to state that some other person has acknowledged the same, as therein described, when in fact such person has not made such acknowledgment, or shall sign such acknowledgment in blank, the person or persons so offending shall be deemed guilty of a misdemeanor, and being thereof convicted, shall be subject to a punishment of not less than one hundred dollars fine, and be imprisoned in the county jail not less than ten days, nor more than one hundred days, and shall be liable, personally, and upon his official bond, to its amount hereafter given, to any person or persons who shall suffer thereby, in such damage as such person or persons shall suffer.

NOTE—Section 140, Act of March 12, 1885

CHAPTER IX.

OFFENCES AGAINST THE PUBLIC PEACE AND TRANQUILITY.

Sec. 141. Disturbing peace of neighborhood or family.
Sec. 142. Unlawful assembly—disturbing the peace.

Sec. 143. An affray—what deemed.
Sec. 144. Unlawful assembly—what deemed.
Sec. 145. Riot—what deemed.
Sec. 146. Disturbing religious congregation.
Sec. 147. Prize fighting, engaging as principal.
Sec. 148. Prize fighting, engaging as second, etc.
Sec. 149. Recognizance to be given to not engage in a prize fight.
Sec. 150. Penalty for forfeiture of recognizance.
Sec. 151. Duties of officers when they believe a prize fight is about to be engaged in.
Sec. 152. Vending intoxicating liquors within one mile of a camp meeting, held for religious worship.
Sec. 153. Officer having knowledge of persons intening to fight with deadly weapons to prevent same.
Sec. 154. Libel—what is; punishment therefor.

13th ses p 42. Breach of the peace.

SEC. 141. If any person shall wilfully and maliciously disturb the peace or quiet of any neighborhood, or family, by loud or unusual noises, or by tumultuous and offensive conduct, threatening, traducing, quarrelling, challenging to fight, or fighting, every person convicted thereof shall be fined in a sum not exceeding one hundred dollars, or imprisonment in the county jail not exceeding two months, or both such fine and imprisonment, in the discretion of the court.

NOTE—Section 141, from act of Feb 16th, 1883.

Unlawful assemblage.

SEC. 142. If two or more persons assemble for the purpose of disturbing the public peace or committing any unlawful act, and do not disperse on being desired or commanded so to do by a judge or justice of the peace, sheriff, coroner, constable, or other public officer, the persons so offending, shall, upon conviction, be severally fined in any sum not exceeding five hundred dollars, and imprisoned in the county jail not exceeding six months.

13th ses. p. 42. Affray.

SEC. 143. If two or more persons shall by agreement fight in a public place, to the terror of the citizens of this territory, the persons so offending shall be deemed guilty of an affray, and shall be severally fined in a sum not exceeding one hundred dollars, or imprisoned in the county jail not more than one month, or by both such fine and imprisonment, in the discretion of the court.

13th ses. p. 42 Unlawful assembly.

SEC. 144. If two or more persons shall assemble together to do an unlawful act, and separate without doing or advancing towards it, such persons shall be deemed guilty of an unlawful assembly, and, upon conviction thereof, shall be fined severally in a sum not exceeding one hundred dollars, or imprisonment in the county jail, not exceeding three months, or both such fine and imprisonment, in the discretion of the court.

13th ses. p 42.

Riot

SEC. 145. If two or more persons meet to do an unlawful act upon a common cause of quarrel, and make advances toward it, they shall be deemed guilty of a riot, and, on conviction thereof, shall be severally fined in a sum not exceeding one hundred dollars, or imprisoned in the county jail not exceeding three months, or by both such fine and imprisonment, in the discretion of the court; and if two or more persons shall actually do an unlawful act of violence, either with or without a common cause of quarrel, or even do an unlawful act in a violent, tumultuous, and illegal manner, they shall be deemed guilty of a riot, and, upon, conviction thereof, shall be fined in any sum not exceeding one hundred dollars each, or be imprisoned in the county jail for any term not exceeding three months, or by both such fine and imprisonment, in the discretion of the court.

13th ses. p. 42.

Disturbance of religious meeting.

SEC. 146. Every person who shall wilfully disquiet or disturb any congregation or assembly of people met for religious worship, by making a noise, or by rude or indiscreet behavior, or profane discourse, within their place of worship, or so near the same as to disturb the order or solemnity of the meeting, or menace, threaten, or assault any person there being, shall be deemed guilty of a misdemeanor, and punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment, in the discretion of the court.

NOTE—Sections 143, 144, 145 and 146 from Act of February 16, 1883.

14th ses p 108

Prize fighting.

SEC. 147. If any person shall engage as principal in any fight or contest commonly called a prize fight, every person so offending shall, on conviction, be imprisoned in the penitentiary, and kept at hard labor, not less than six months nor more than two years, and pay the costs of prosecution.

Attending prize fight as backer, etc

SEC. 148. If any person shall engage, be concerned in, or attend any such fight or contest as described in section 147, as backer, trainer, second, umpire, or assistant, every person so offending shall, on conviction, be fined in any sum not more than one hundred dollars, or be imprisoned in the county jail not less than ten days nor more than three months, or by both fine and imprisonment, in the discretion of the court, and pay the costs of prosecution.

14th ses p 108

Person suspected of intending to engage in prize fight to take oath.

SEC. 149. If any person shall make affidavit before any justice of the peace or probate judge that he has reason to believe, and does believe, that any person or persons have entered into any arrangement or agreement to engage in a prize fight, or that such arrangement or agreement has been entered into by any other person or persons on the part of the persons who are to engage therein; or if any person shall make affidavit that any person is in preparation or training for the purpose of engaging in a prize fight, it shall be the duty of the justice or judge before whom such affidavit is made to issue a warrant for the arrest of the person or persons named in the affidavit, and upon the hearing, if the court is satisfied of the truth of the charge made in the affidavit, it shall require the person or persons charged to make an oath that he will not engage in any prize fight in this territory, or to enter into a recognizance, in not less than one thousand dollars, with two sufficient sureties to be approved by the justice or judge that he will not engage in any prize fight for the period of one year from the date of the recognizance. The person or persons failing or refusing to take said oath, or enter into said recognizance, shall be committed to the county jail for three months, or until he will take said oath, or enter into the recognizance mentioned.

14th ses. p. 109

Perjury in such case.

SEC. 150. If any person, taking the oath mentioned in the preceding section, shall at any time thereafter engage as principal in any prize fight in this territory, in addition to the penalty prescribed by section 147, of this division, he shall be subject to indictment for perjury, and, upon conviction, to be punished therefor as prescribed by law.

14th ses. p. 109

Duty of sheriff as to suspected prize-fight

SEC. 151. If any sheriff or constable shall have information and reason to believe that such fight or contest, as is described in section 147, is about to take place within his county, he shall forthwith summon a force of citizens of the county, sufficient for the purpose, and suppress such fight or contest, and arrest all persons present thereat who may be found violating any of the provisions of sections 147, 148, 149 and 150, and take them before the probate judge, or justice of the peace, to be dealt with according to law. All fines and costs collected under the provisions of sections 147, 148, 149 and 150 shall be paid into the treasury of the county to the credit of the general fund.

NOTE.—Sections 147 to 151 inclusive, Act of March 10, 1885

Selling liquor within one mile of camp meeting.

SEC. 152. Every person who shall erect or keep a booth, tent, stall, or other contrivance for the purpose of selling or otherwise disposing of any wine, or spirituous or fermented liquors, or any drinks, of which wine, spirituous or fermented liquors form a part, within one mile of any camp or field meeting for religious worship, during the time of holding such meeting, shall be deemed guilty of a misdemeanor, and be punished by a fine not exceeding five hundred dollars.

Duty of peace officer.

SEC. 153. If any judge, justice of the peace, sheriff, or other officer bound to preserve the public peace, shall have knowledge of an intention on the part of two persons to fight with any deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the parties and prevent the deed, every such officer shall be fined in a sum not exceeding one thousand dollars.

Libel

SEC. 154. A libel is a malicious defamation expressed either by printing, or by signs or pictures, or the like, intended to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or publish the natural defects of one who is alive, and thereby expose him or her to public hatred, contempt or ridicule. Every person, whether the writer or publisher, convicted of the offence, shall be fined in a sum not exceeding five thousand dollars, or imprisoned in the county jail not exceeding six months. In all prosecutions for libel the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the act.

CHAPTER X.

OFFENCES AGAINST PUBLIC MORALITY, HEALTH AND POLICE.

Sec. 155. Bigamy defined.
Sec. 156. Punishment therefor.
Sec. 157. Sunday or Lord's day—observance of.
Sec. 158. Refusing to aid officer when lawfully commanded.
Sec. 159. Officer having notice of unlawful assembly, refusing to act.
Sec. 160. Selling or giving intoxicating liquor to Indian.

Sec. 161. Incestuous marriages, fornication and adultery.
Sec. 162. Obstructing or injuring public highway, street, bridge, ditch, river, etc.
Sec. 163. Keeping or storing large quantities of combustible material within the limits of unincorporated towns or villages.
Sec. 164. Removal of dead animals from unincorporated towns and villages.
Sec. 165. Opium dens or joints.
Sec. 166. Judgment to be a lien on the premises.
Sec. 167. Keeping of an opium den to forfeit lease.
Sec. 168. Persons prohibited from visiting opium dens for the purpose of smoking, etc.
Sec. 169. Owners prohibited from leasing premises for opium dens.
Sec. 170. Penalty for violating sections 165 to 170, inclusive.
Sec. 171. Unlawfully diverting water from ditches, etc.
Sec. 172. Preventing the use of water by persons entitled thereto.
Sec. 173. Defacing or destroying notice, advertisement, record, etc.
Sec. 174. Having in possession pick-lock or other instrument with intent to break into buildings, etc., or deadly weapon with intent to assault, etc.
Sec. 175. Male person above age of eighteen years refusing to join posse comitatus.
Sec. 176. Selling unwholesome provisions.
Sec. 177. Adulterating food or liquor for sale.
Sec. 178. Imitation butter or cheese, manufacture and sale of regulated.
Sec. 179. Penalty for violation of preceding section.
Sec. 180. Imitation butter or cheese to be so marked or labeled.
Sec. 181. Adulterating drugs or medicines for sale.
Sec. 182. Physician while intoxicated prescribing poisonous drugs or medicine.
Sec. 183. Apothecary selling poison without marking same as "Poison."
Sec. 184. Record of sales of certain drugs to be kept.
Sec. 185. Penalty.

Sec. 186. Giving fictitious name to vendor.
Sec. 187. Record open to inspection.
Sec. 188. Selling spirituous liquors to soldiers.
Sec. 189. Soldier obtaining spirituous liquors by putting off uniform.
Sec. 190. Defence against violation of section one hundred and eighty-eight.
Sec. 191. Oleomargarine, sale of regulated.
Sec. 192. Boarding house and restaurant keepers required to inform their patrons if they use oleomargarine.
Sec. 193. Addition of foreign substances to butter or cheese to be adulteration.
Sec. 194. Penalty for violation, etc.
Sec. 195. Sale of firearms to minors prohibited.
Sec. 196. Circulating obscene literature forbidden and punished.

Bigamy.

SEC. 155. Bigamy consists in having two wives or two husbands at one and the same time, knowing that the former husband or wife is still alive. If any person or persons within this territory, being married, or who shall hereafter marry, do, at any time, marry any person or persons, the former husband or wife being alive, the person so offending shall, on conviction thereof, be punished by a fine not exceeding one thousand dollars, and be imprisoned in the territorial prison not less than one year, nor more than five years. It shall not be necessary to prove either of the said marriages by the register and certificate thereof, or other record evidence, but the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when such second marriage shall have taken place without this territory, cohabitation in this territory after such second marriage, shall be deemed the commission of the crime of bigamy. Nothing herein contained shall extend to any person or persons whose husband or wife shall have been continually absent from such person or persons for the space of five years together prior to the said second marriage, and he or she not knowing such husband or wife to be living within that time. Also, nothing herein contained shall extend to any person that is, or shall be, at the time of the second marriage, divorced by lawful authority from the bond of such former marriage, or to any person, when the former marriage has been by lawful authority rendered void.

Marrying husband or wife of another.

SEC. 156. If any man or woman, being unmarried, shall knowingly marry the wife or husband of another, such man or woman shall, upon conviction, be fined not less than one thousand dollars, or imprisoned in the territorial prison not less than one year, nor more than two years.

Keeping open dance-house, etc. on Sunday

SEC. 157. It shall be unlawful for any person to keep open any play-house, theatre, dance-house, hurdy-gurdy house, prize-ring, race-tract, or to keep open any banking game at cards, on the first day of the week, commonly called Sunday or the Lord's day. Any person who shall violate the provisions of this section of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one dollar, nor more than one hundred dollars, or by imprisonment in the county jail not less than one nor more than thirty days, or by both such fine and imprisonment.

Refusing to aid officer.

SEC. 158. Every person who shall fail, refuse, or neglect, without a lawful cause, when commanded by any sheriff or other public officer to assist him in the execution of any process or in dispersing any unlawful or riotous assembly, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not less than five dollars, nor more than five hundred dollars, or by imprisonment in the county jail not less than five days, nor more than ninety days, or by both such fine and imprisonment.

Failing to suppress riot.

SEC. 159. If any magistrate or officer, having the legal power to suppress any unlawful or riotous assembly, have notice thereof, and shall neglect or refuse to proceed to the place of such assembly, or as near thereto as may be safe, and exercise the authority vested in him for suppressing the same, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not less than five dollars, nor more than five hundred dollars, and by imprisonment in the county jail not less than ten days, nor more than ninety days.

Providing Indian or half-breed with liquor.

SEC. 160. If any person shall, directly or indirectly, sell, barter, or give intoxicating liquor, whether fermented, vinous, or spirituous, or any decoction or composition of which fermented, vinous, or spirituous liquor is a part, to any Indian or half-breed Indian in this territory, he shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by fine of not less than one hundred dollars, nor more than five hundred dollars, and shall be imprisoned in the territorial prison for a term not exceeding three years. It shall be the duty of the judges holding the several district courts in this territory to give this act in charge to the grand jury at each term of their court. One-half the fine mentioned in this section, shall, when collected, be given to the person or persons who shall inform against the person guilty of the offence named in this section, and in addition thereto, the governor may offer a reward for the conviction of offenders under the provisions of this section, not exceeding fifty dollars for each person convicted; and in addition to the penalties prescribed in this section, it shall be the duty of the officers or persons arresting such offender to seize any horses, wagons, and other personal property in the possession of the offender while so selling said liquor to said Indians, or in the possession of any other person for him, to facilitate the transportation or sale of such intoxicating liquors to said Indian or Indians, and to hold the same until the final trial of such offender; and if such person shall be convicted, the said property shall be adjudged forfeited, and shall be sold, one-half of the proceeds being paid to the informer, or person seizing the same, as the court may direct, and the other half shall be paid into the treasury of the county in which such conviction may be had. 12th ses. p 51.

NOTE —Last paragraph of section 160 act of Feb. 19th, 1881.

Incest.

SEC. 161. *First.* Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who shall intermarry with each other, or who shall commit fornication or adultery with each other, shall, on conviction, be punished by imprisonment in the territorial prison not less than one nor exceeding ten years.

Adultery. Fornication

Second. That if any married woman shall hereafter desert her husband, and live and cohabit with another man, in a state of adultery, she shall on conviction thereof, be imprisoned in the county jail of the county where such offence is committed, not exceeding sixty days. And if any married man shall hereafter desert his wife, and live and cohabit with any other woman in a state of adultery, or if any married man living with his wife, shall keep any other woman and notoriously cohabit with her, in a state of adultery; or if any unmarried man shall live and cohabit with a married woman in a state of adultery, or if any unmarried man shall live and cohabit with an unmarried woman, every person so offending shall, on conviction thereof, be fined in any sum not exceeding three hundred dollars, and be imprisoned in the county

—35

jail of the county where such offence is committed, for a period not exceeding six months, and not less than sixty days.

NOTE.—The second clause of preceding section is from the act of January 28th, 1876.

Obstructing or injuring highway, stream, etc

SEC. 162. If any person shall obstruct or injure, or cause or procure to be obstructed or injured, any public road or highway, or common street or alley, of any city, town or village, or any public bridge, or causeway, mill-race, mill-dam, or ditch, or public river, or stream, or shall continue such obstruction so as to render the same inconvenient or dangerous to pass, or shall erect or establish any offensive trade, manufacture, or business, or continue the same after it has been erected or established, or shall in any wise pollute or obstruct any watercourse, water-ditch, lake, pond, marsh, or common sewer, or continue such obstruction or pollution, so as to render the same offensive or unwholesome to the county, town, city, village, or neighborhood thereabouts; or shall erect or maintain any other thing which would be a nuisance at common law, every person so offending, shall, upon conviction, be fined not more than one thousand dollars. And every such nuisance, may, by order of the court before whom the conviction may take place, be removed and abated by the sheriff of the county.

NOTE.—Act February 8th, 1877

12th ses. p. 64.

Keeping combustibles in town or village.

SEC. 163. Every person who shall, within the exterior limits of any unincorporated town or village in the Territory of Montana, place and keep large quantities of wood, hay, straw, powder, or other combustible or explosive materials, so as to endanger the dwelling houses or other buildings in the neighborhood from fire, shall be deemed guilty of establishing or keeping and maintaining a public nuisance, and shall, upon conviction thereof, before any court of competent jurisdiction, be fined in any sum not exceeding one hundred dollars.

12th ses. p. 65.

Removal of dead animals

SEC. 164. It shall be the duty of the owner of any horse, cow, mule, ass, hog, dog, or other animal which shall die within the limits of any unincorporated town or village in the Territory of Montana, to remove the same from such town or village within twenty-four hours after the same shall have died, and bury or burn the same. Any person who shall violate the provisions of this section shall be deemed guilty of keeping and maintaining a nuisance, and, upon conviction thereof, before any court of competent jurisdiction, shall be punished as provided in section 163 of this division.

NOTE.—Sections 163 and 164, Act of Feb. 18, 1881.

12th ses. p. 65.

Opium joints.

SEC. 165. Any person or persons, who shall keep or who, being the owner thereof, shall knowingly permit to be kept, any house, room or apartment, or other place of any kind, to be used as a place of resort by any person or persons, for the purpose of indulging in the use of opium, or any preparation containing opium, by smoking or otherwise, or who shall sell opium for such purpose, shall, on legal conviction thereof, be punished as provided in section 170.

Lien.

SEC. 166. Any judgment obtained under the provisions of sections 165, 166, 167, 168 and 169, of this chapter, for a fine and costs, or either, shall be a lien on the property wherein the offence was committed, which lien shall not be discharged until such judgment shall have been paid or otherwise legally satisfied: *Provided*, That such lien shall not attach in cases when it shall appear that the owner of the property was not a party to the commission of the offence, and had no knowledge thereof before its commission.

Same.

SEC. 167. If any person shall use any house, room, apartment, or other place leased to him or her, for any of the purposes forbidden by section 165, such illegal use shall, at the option of the lessor, operate as a forfeiture of such lease, and of all rights given thereby, whether the same be expressed or not in such lease.

Resorting to opium joints.

SEC. 168. It shall not be lawful for any person to resort to any house, room or apartment or other place kept for any of the purposes forbidden by section 165 for the purpose of indulging in the use of opium, or any preparation containing opium, by smoking or otherwise; and any person who shall violate the provisions of this section shall, on legal conviction thereof, be punished as provided in section 170.

Leasing house for opium joint

SEC. 169. Any person leasing any house, room, apartment, or other place, to be used as a place of resort, to any person or persons for the purpose of indulging in the use of opium, or any preparation containing opium, knowing the purpose for which said house, room or apartment is to be used, any judgment obtained as provided in section 166, shall be a lien upon such house, room, apartment, or other place of business so leased.

Penalty for violating preceding sections

SEC. 170. Any person or persons who shall be found guilty of violating the provisions of sections 165, 166, 167, 168, or 169 shall, on conviction thereof, be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months, or both such fine and imprisonment; as the court shall adjudge.

NOTE.—Sections 165, to 170, inclusive, Act of Feb. 22nd, 1881

13th ses. p. 113

Unlawful diversion of water

SEC. 171. Any person who shall divert from any water course or ditch any water flowing therein, and by such diversion shall deprive another of the use of water to which he is entitled by law, and who shall refuse immediately to relinquish the water so diverted upon demand being made by the person or by the agent of the person to whom the water rightfully belongs, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding three months, or by both such fine and imprisonment, in the discretion of the court.

13th ses. p 113

Preventing lawful diversion of water

SEC. 172. If any person by force or threats, or intimidation, or putting in fear with arms or otherwise, near or upon any watercourse or ditch, shall prevent, or seek to prevent any person from possessing or obtaining any water to the use of which he is entitled by law, and which he then desires for some useful purpose; or by said means shall prevent or seek to prevent any person who is lawfully entitled to the use of water from diverting the same, as he may desire, when and where he may desire, for a useful purpose, every person so offending shall be deemed guilty of a felony, and, on conviction thereof, shall be imprisoned in the territorial prison not less than one year nor more than five years.

NOTE.—Sections 171 and 172, Act of March 6, 1883

Defacing public notice, etc.

SEC. 173. If any person shall intentionally deface, or obliterate, tear or destroy, in whole or in part, any record, copy or transcript, or extract from or of any law of the United States, or of this territory, or any proclamation, advertisement or notification, set up at any place in this territory, by authority of any law of the United States or of this territory, or by order of any court, such person, on conviction, shall be fined not more than one hundred dollars, nor less than twenty dollars, or be imprisoned in the county jail not more than one month: *Provided*, This section shall not extend to defacing, tearing down, obliterating or destroying any law, proclamation, publication, notification, advertisement, or order, after the time for which the same was by law to remain set up shall have expired.

Possession of pick-lock, gun, etc with criminal intent.

SEC. 174. If any person shall have found upon him or her any pick-lock, crow-key, bit or other instrument or tool, with intent feloniously to break and enter into any dwelling-house, store, shop, warehouse, or other building containing valuable property, or shall be found in any of the aforesaid buildings, with intent to steal any money, goods, and chattels, every person so offending, shall, on conviction thereof, be imprisoned in the territorial prison for a term not less than one year, nor more than five years; and if any person shall have upon him or her any pistol, gun, knife, dirk-knife, bludgeon, or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined not more than one hundred dollars, or imprisoned in the county jail not more than three months.

Refusing to aid officer

SEC. 175. Every male person above eighteen years of age who shall neglect or refuse to join the *posse comitatus*, or power of the county, by neglecting or refusing to aid and assist in arresting or taking any person or persons against whom there may be issued any process, or by neglecting to aid or assist in re-taking any person or persons, who, after being arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offence, being thereto lawfully required by the sheriff, deputy sheriff, coroner, constable, judge, justice of the peace, or other officer concerned in the administration of justice, shall, upon conviction, be fined in any sum not less than fifty nor more than one thousand dollars, or shall be imprisoned in the county jail for a period of thirty days, or both such fine and imprisonment.

Selling unwholesome provisions

SEC. 176. If any person shall knowingly sell any kind of diseased, corrupted, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, he shall be punished by imprisonment in the county jail not more than six months, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Adulteration of food or liquors

SEC. 177. If any person shall fraudulently adulterate, for the purpose of sale, any substance intended for food, or any wine, spirits or malt liquor, or other liquor, intended for drinking, with any substance injurious to health, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding two hundred dollars, and the article so adulterated shall be forfeited and destroyed.

14th ses. p 51

Selling imitation butter, etc., without designating it

SEC. 178. Every person who shall manufacture for sale, or who shall offer or expose for sale by the tub, firkin, box, or package, or any greater quantity whatever, any article or substance in semblance of butter and cheese, not the legitimate product of the dairy, and not made exclusively of milk or cream, but into which any oil, lard, intestinal or offal fat, not produced from milk or cream, enters as a component part, or into which melted butter or any oil thereof has been introduced to take the place of cream, shall distinctly and durably stamp, brand, or mark upon the side of every cheese, and also upon the top and side of every such tub, firkin, box, or package of such article or substance the word "Oleomargarine Butter," or, if containing cheese, the words "Imitation Cheese," only where it can be plainly seen, in Roman letters, which shall be burned in or painted thereon with permanent black paint in a straight line, and shall not be less than one-half inch in length; and in case of retail sales of such articles or substances in parcels, the seller shall in all cases sell, or offer or expose the same for sale, from a tub, firkin, box, or package stamped, branded, or marked as herein stated, and shall also deliver therewith to the purchaser a printed label bearing the plainly printed words "Oleomargarine Butter," or if cheese, the words "Imitation Cheese," only in Roman letters not less than one-half inch in length, which shall be printed in a straight line; and every sale of such article or substance by the tub, firkin, box, or package, or in any greater quantity, not so stamped, branded, or marked, and every such sale of such article or substance at retail in parcels that shall not be sold from a tub, firkin, box, or package so stamped, branded, or marked, or without delivery of a label therewith, as above stated, is declared to be unlawful and void, and no action upon any contract shall be maintained in any of the courts of this territory to recover upon any contract for the sale of such article or substance not so stamped, branded, or marked.

14th ses. p. 52

Same.

SEC. 179. Every person who shall sell, or offer or expose for sale, or have in his or her possesssion, with intent to sell by the tub, firkin, box, or package, or in any greater quantity; any of the said articles or substance required by section 178 to be stamped, branded, or marked, that shall not be so stamped, branded or marked, or in the case of retail sales in parcels, evey person who shall sell, or offer or expose for sale, any of said article or substance without selling, offering or exposing for sale the same from a tub, firkin, box, or package stamped, branded, or marked as in said section 178 provided, or without delivery of a label as required in said section, shall for every such offence forfeit and pay a fine of one hundred dollars, to be recovered with costs, in any of the courts in this territory having cognizance thereof, in an action to be prosecuted in the name of this territory, and the one-half of such recovery shall be paid to the informer, and the residue shall be applied to the public school fund in the county where such recovery is had.

14th ses p 52.

Same.

SEC. 180. Every person who shall sell, or offer or expose for sale, or who shall cause or procure to be sold, offered, exposed for sale by the tub, firkin, box, or package, or in any greater quantity, any article or substance required by section 178 to be stamped, branded, or marked, not so stamped branded or marked, or in case of retail sales in parcels, every person who shall sell, or offer or expose for sale, or who shall cause or procure to be sold, offered, or exposed for sale any article or substance required by section 178 to be sold, offered, or exposed for sale from a tub, firkin, box, or package stamped, branded, marked, or labeled as therein stated, contrary to the provisions of such section, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than one hundred dollars, or by imprisonment in the county jail for not less than ten nor more than thirty days, or by both such fine and imprisonment for each and every offence.

NOTE—Sections 178, 179 and 180 Act of March 10th, 1885

Adulteration of medicine

SEC. 181. If any person shall fraudulently adulterate, for the purpose of sale, any drug or medicine, or sell any drug or medicine knowing it to be adulterated, or offer the same for sale, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred dollars; and such adulterated drugs and medicines shall be forfeited and destroyed.

Prescription of poison by intoxicated person.

SEC. 182. If any physician, or other person, while in a state of intoxication, shall prescribe any poisonous drug or medicine to another person, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

13th ses. p. 43.

Selling poison without designating it.

SEC. 183. Every apothecary, druggist, or other person, who shall sell or deliver any arsenic, corrosive sublimate, prussic acid, or any other active poison without having the word "Poison," and the true name thereof in English, written or printed upon a label attached to the vial, box, or parcel containing the same, shall be punished by a fine not exceeding one hundred dollars, or imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment, at the discretion of the court.

NOTE—Section 183, act of Feb. 16th, 1883.

Record of sale of certain drugs to be kept

SEC. 184. Whoever sells arsenic, strychnine, corrosive sublimate, or prussic acid within this territory shall keep a record of the date of such sale, the name of the article, the amount thereof sold and the name of the person or persons to whom delivered.

Penalty.

SEC. 185. Any person neglecting to comply with the provisions of this act shall be fined in the sum not exceeding fifty dollars for each and every offence.

Giving fictitious name to vendor.

SEC. 186. Whoever purchases deadly poisons as aforesaid, and gives a false or fictitious name to the vendor shall be punished by a fine not exceeding fifty dollars.

Record open to inspection.

SEC. 187. The record provided to be kept by this act shall be open to inspection for any and all persons at all times.

NOTE—Sections 184, 185, 186 and 187 are sections 1, 2, 3, 4, and comprise all of "An act regarding the sale of poisonous drugs," approved March 9th, 1887.

Selling liquor to soldiers

SEC. 188. That if any person shall exchange, give, barter, or dispose of any spirituous liquors or wine and beer to any troops of the United States, serving within the limits of this territory, except such supplies as may be ordered by the officers of the United States army, under the direction of the war department, such person, on conviction thereof before the district court of the United States, or before any court of competent jurisdiction of this territory hereafter to be formed, shall be imprisoned for a period not to exceed one year, and be fined in the sum of five hundred dollars.

Putting off uniform, etc. of soldier for purpose of deception.

SEC. 189. If any person who has been mustered into the United States service shall put off the uniform and other badges by which he is known and designated from a civilian, and with the intention to deceive, and shall obtain any spirituous liquor or wine and beer from any person, it shall be the duty of the marshal, sheriff, or any police officer of the territory of Montana, upon complaint being made, to arrest, or cause to be arrested, such person, and keep him in custody until the commanding officer of the company to which he belongs shall apply for his release.

SEC. 190. If any person against whom complaint has been made for the violation of section one hundred and eighty-eight of this act, can establish, by a good and competent witness, that spirituous liquor or wine and beer were obtained from him deceitfully, by a soldier, who did not wear, at the time of obtaining such spirituous liquor or wine and beer, a uniform, or other badges used to distinguish him from a civilian, and that he did not know such person to be a soldier, such person so complained against shall not be liable to the penalties enumerated in this act.

14th ses p. 101

Oleomargarine, etc to be designated

SEC. 191. Any person or persons who shall offer, expose, or have for sale, or give or offer to give away, or in any manner dispose of, oleomargarine, butterine, suine, or any article, substance or preparation, intended to be used, or which can be used, sold, given away, or disposed of as a substitute for butter or cheese, or for any of the purposes for which butter and cheese are used, by whatever name the same may be designated, shall, in addition to the requirements now made by law as to notice, etc., post at least four notices, printed in plain Roman type, of at least one inch in length, three of said notices, to be in the English and one in the German language, in four conspicuous places in each salesroom, store, office, place or places where said substance, article, or preparation is so kept or offered for sale, or disposed of, said notices to contain the true name of such article, substance or preparation, over the words "for sale here," and no other words whatsoever.

14th ses p 102

Same.

SEC. 192. Any person or persons keeping, conducting, running or being the proprietor or proprietors of any hotel, inn, restaurant, boarding house, lunch room, place or places where meals are sold, who shall use, cause or allow to be used or furnished in such hotel, inn, restaurant, boarding house, lunch room, place or places where meals are sold, any oleomargarine, butterine, suine, or any article or substance as a substitute for, or in the place of butter or cheese, shall post four notices, three in English and one in the German language, printed in plain Roman type of at least one inch in length, in four conspicuous places in the room or rooms where said meals are furnished or sold; said notices to contain the true or common name of any such article or substance, over the words "used here instead of butter," and no other words whatsoever.

14th ses p 102

Adulteration of butter or cheese.

SEC. 193. The addition to butter or cheese, by any process whatsoever, of the oil, fat, or lard of animals, not produced from milk or cream, or of any vegetable oil or substance, is hereby declared an adulteration.

Penalty for violating foregoing sections

SEC. 194. Any person or persons violating any of the provisions of sections 191, 192 and 193 shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than fifty dollars, and not more than one hundred dollars, or by imprisonment in the county jail for not less than ten days, nor more than thirty days, or by both such fine and imprisonment, one-half of such fine to be paid to the informer, and one-half to the county treasurer of the county where such fine is recovered.

NOTE.—Sections 191, 192, 193 and 194, Act of March 12th, 1885

14th ses p 102

Furnishing fire arms, etc , to person under 16 years of age

SEC. 195. Any person who shall sell, barter, give or in any manner dispose of any fire arms or ammunition of any description whatever to any person under the age of sixteen years shall be deemed guilty of a misdemeanor, and, upon conviction thereof before any court of competent jurisdiction, shall be fined in any sum not exceeding one hundred dollars, or be imprisoned in the county jail for any term not exceeding three months.

NOTE.—Section 195, Act of February 23d, 1883

Obscene literature.

SEC. 196. It shall be unlawful for any person or persons within the Territory of Montana, to indite, send or transmit through the mails or otherwise to any person or persons residing in the Territory of Montana, any vulgar, obscene or indecent letter or other written or printed communication; or any vulgar, obscene or indecent pictures, illustrations, writings or printed matter of any character whatsoever, and any person or persons violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten (10) dollars or more than one hundred (100) dollars or imprisonment in the county jail for a period of not less than ten (10) days or more than ninety (90) days, or both such fine and imprisonment in the discretion of the court.

NOTE.—Section 196 is Section 1, and comprises all of "An Act concerning obscene literature;" approved March 1st, 1887.

CHAPTER XI.

OFFENCES COMMITTED BY CHEATS, SWINDLERS AND OTHER FRAUDULENT PERSONS.

Sec. 197. Fraudulent conveyances.
Sec. 198. Credit by false pretences.
Sec. 199. Goods obtained thereby.
Sec. 200. Second sale of land.
Sec. 201. False weights and measures.
Sec. 202. Debtor fraudulently removing, concealing, or selling property.
Sec. 203. Fraudulently disposing of or concealing property during suit, or after judgment.
Sec. 204. Keeping or using false scales or weights for weighing gold.
Sec. 205. Refusing to account for proceeds of quartz mill, arastra, etc.
Sec. 206. Gambling houses to be designated by sign.
Sec. 207. Locked or barred doors prohibited.
Sec. 208. Certain games prohibited.
Sec. 209. Fines how paid.
Sec. 210. Keeper of house, shop, saloon, etc., violating section 208.
Sec. 211. Selling fire arms and ammunition to hostile Indians.
Sec. 212. Putting out poison near city or private house prohibited.
Sec. 213. Penalty for violating section 212.

Fraudulent conveyance

SEC. 197. All and every person who shall be a party to any fraudulent conveyance of any lands, tenements, or hereditaments, goods, or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment, or execution, contract, or conveyance had, made, or contrived with intent to deceive and defraud others, or to defeat, hinder, or delay creditors or others of their just debts, damages, or demands, or who, being parties as aforesaid, at any time shall willingly put in use, avow, maintain, justify, or defend the same, or any of them, as true, and done, had or made in good faith, or upon good consideration, or shall alien, assign, or sell any of the lands, tenements, hereditaments, goods, chattels, or other things before mentioned, to him, her, or them conveyed as aforesaid, or any part thereof, he, she, or they so offending shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars, or imprisoned in the county jail not less than six months.

Swindler.

SEC. 198. If any person, by false representation of his own wealth, or mercantile correspondence and connections, shall obtain a credit thereby, and defraud any person or persons of money, goods, chattels or any valuable thing, or if any person shall cause or procure others to report falsely of his wealth or mercantile character, and by thus imposing upon any person or person, obtain credit, and thereby fraudulently get into the possession of goods, wares, or merchandise, or other valuable thing, every such offender shall be deemed a swindler, and, on conviction, shall be sentenced to return the property so fraudulently obtained, if it can be done, and shall be fined not exceeding one thousand dollars, and imprisonment in the county jail not more than six months.

Cheat.

SEC. 199. Any person or persons who shall knowingly and designedly by any false pretense or pretenses obtain from any other person or persons any chose in action, money, goods, wares, chattels, effects or other valuable thing with intent to cheat, or defraud any such person or persons of the same, shall be deemed a cheat, and on conviction thereof shall be punished in the same manner and to the same extent as for feloniously stealing the money, or property so received, and also be sentenced to restore the property so fraudulently obtained, if it can be done.

NOTE—Section 199 is as amended by "An act to amend section 161 of the Fourth Division of the Revised Statutes of Montana," approved March 5th, 1887, and comprises all of said act.

Fraudulently selling same property twice

SEC. 200. Any person or persons after once selling, bartering, or disposing of any tract or tracts of land, town lot or lots, or executing any bond or agreement for the sale of lands, or town lot or lots, who shall again knowingly or fraudulently sell, barter, or dispose of the same tract or tracts of land, or town lot or lots, or any part thereof, or shall knowingly or fraudulently execute any bond or agreement to sell or barter, or dispose of the same land, or lot or lots, or any part thereof, to any other person or persons, for a valuable consideration, every such offender, upon conviction thereof, shall be punished by imprisonment in the territorial prison not less than one year, nor more than five years.

13th ses. p. 43.

Common cheat.

SEC. 201. If any person shall knowingly sell any goods, wares, or merchandise, or any valuable thing, by false weight or measure, or shall knowingly use false measures at any mill in taking toll for grinding corn, wheat, rye, or other grain, he shall be deemed a common cheat, and, on conviction, shall be fined not exceeding one hundred dollars, or imprisonment in the county jail not more than three months, or by both such fine and imprisonment, in the discretion of the court.

NOTE —Section 202 act of Feb 16th, 1883

Defrauding creditors.

SEC. 202. If any debtor shall fraudulently remove his property or effects out of this territory, or shall fraudulently sell, convey, assign, or conceal his property or effects, with intent to defraud, hinder, or delay his creditors of their just rights, claims, or demands, he shall, on conviction, be punished by imprisonment in the county jail for any term not exceeding six months, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

Fraudulent disposition of property in litigation.

SEC. 203. Any person against whom an action is pending, or against whom a judgment has been rendered, for the recovery of any personal property or effects, who shall fraudulently conceal, sell, or dispose of said property or effects, with intent to hinder, delay, or defraud the person bringing such action, or recovering such judgment, or shall, with such intent, remove such property or effects beyond the limits of the county in which it may be at the time of commencement of such action, or the rendering of such judgment, shall, on conviction, be punished as provided in the next preceding section.

False weights, etc

SEC. 204. If any person shall knowingly have, keep, or use any false or fraudulent scales or weights for weighing gold, or gold dust, every person so offending shall be fined in any sum not exceeding one thousand dollars, nor less than one hundred dollars, or imprisonment not more than one year, or both, at the discretion of the court.

Failing to account for gold extracted

SEC. 205. If any owner, manager, or agent, of any species of quartz mill, arastra furnace or cupel employed in extracting gold from quartz, pyrites, or other minerals, who shall neglect or refuse to account for, or pay over and deliver all the proceeds thereof to the owner of such quartz, pyrites, or other minerals, excepting such portion of said proceeds as he is entitled to in return for his services, he shall, on conviction, be fined in any sum not exceeding one thousand dollars, or imprisoned not more than one year, or both, at the discretion of the court, for each such offence.

Gambling room to be designated by sign.

SEC. 206. Hereafter it shall be unlawful for any person or persons to carry on any game of chance where money or any thing of value is bet, ventured or hazarded in any room or apartment without having on the outside of the building wherein the same is situated, in a place where the same may be plainly seen, a sign with the words in letters of at least five inches in length, "Licensed Gambling Room," painted thereon. Any neglect or failure to observe the provisions of this act shall be deemed a misdemeanor, and each and every days' failure or neglect thereof shall be deemed a separate and distinct offence, and any person convicted therefor shall be punished by a fine of not less than twenty-five dollars, nor more than one hundred, or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment.

Doors to gambling room not to be locked or barred.

SEC. 207. It shall be unlawful to carry on or permit to be carried on, any game of chance where money or any thing of value is bet, ventured or hazarded in any room, apartment or building, with locked, barred or fastened doors, and into and from which free and unmolested entrance and egress may not be had while such game of chance is in progress. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than twenty dollars nor more than one hundred dollars, or be imprisoned in the county jail not less than one month nor more than three months, or by both such fine and imprisonment.

Certain games prohibited.

SEC. 208. That if any person shall deal, play at or make any bet or wager for money or other thing of value, at any of the games called or known as three-card monte, strap game, thimble rig, patent safe game, black and red game (commonly known as the ten dice game), percentage stud horse poker, percentage draw poker, twenty-one, high ball, blue jay, chuck luck, short faro, or any dice game, two card box at faro, or any simsimilar game or games, or shall induce any person whatever to make any bet or wager at any such game, shall be deemed guilty of a felony, and on conviction thereof shall be imprisoned in the territorial penitentiary for a term not exceeding two years, and by fine not less than one hundred dollars nor more than one thousand dollars.

Fines how paid.

SEC. 209. All fines collected under the provisions of this act shall be paid one half to the informer of any violation thereof, and the other half to the use of the common schools of the county where the offence is committed.

NOTE.—Sections 206, 207, 208 and 209 are sections 1, 2, 3 and 4 of "An act to regulate gambling," approved March 9, 1887. The remaining section (5) of said act is the following words: "All acts and parts of acts in conflict with the provisions of this act are hereby repealed."

Penalty.

SEC. 210. If the keeper of any house, shop, tent, saloon, booth, or other place shall knowingly permit any of the games mentioned in section 208, or any game of similar character, or any other game or games where fraud or cheating is practiced, or where loaded dice, marked cards, or waxed cards are used, within said house, shop, tent, saloon, booth, place or enclosure, every such person so offending shall, on conviction, be punished by fine not exceeding one thousand dollars, and shall forfeit any license he may have obtained to keep any tavern, saloon, shop or other place.

Furnishing Indians with fire-arms

SEC. 211. Any person who shall, after the passage of this act, sell, barter, give, or in any manner dispose of, any fireams or ammunition of any description whatever, to any hostile Indians within this territory, shall be deemed guilty of a misdemeanor, and upon due conviction thereof, before any court of competent jurisdiction, shall be fined in any sum not exceeding five hundred dollars, or be imprisoned in the county jail for any term not exceeding six months, or both such fine and imprisonment, in the discretion of the court.

Putting out poison within certain limits prohibited

SEC. 212. It shall hereafter be unlawful for any person to put any poisoned bait meat, or other poisoned substance within the limits of any town, city, or village, or within one mile thereof, or within one-half mile of any ranch or farm house or private residence, without the consent of the owner or owners of said ranch, farm, or private residence.

Penalty.

SEC. 213. Any persons violating the provisions of this act, shall, upon conviction thereof, for each offence be fined in a sum of not less than twenty-five dollars, nor more than one hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than ninety days, or by both such fine and imprisonment, in the discretion of the court.

NOTE.—Sections 212 and 213 are sections 1 and 2 and comprise "An act to prevent the poisoning of dogs and other domestic animals, and to define the punishment for the same." Approved March 9, 1887.

CHAPTER XII.

FRAUDULENT AND MALICIOUS MISCHIEF.

Sec. 214. Injury to domestic animals by poisoning.

Sec. 215. Injury to domestic animals by maliciously killing or maiming.

Sec. 216. Injury to goods and chattels.
Sec. 217. Injury to buildings, fences, etc.
Sec. 218. Injury to wood, lumber, rafts, etc.
Sec. 219. Injury to bridge, flume, reservoir, acqueduct, etc.
Sec. 220. Injury to jail.
Sec. 221. Carelessly setting out fire.
Sec. 222. Maliciously setting out fire or negligently permitting fire to get out.
Sec. 223. Malicious inoculation of contagious disease.

Poisoning domestic animal.

SEC. 214. Every person who shall wilfully administer any poison to any cattle or domestic animal, or maliciously expose any poisonous substance, with intent that the same shall be taken or swallowed by any cattle or domestic animal, shall, upon conviction, be punished by imprisonment in the territorial prison not not less than one year, nor exceeding three years, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

12th ses. p 2.

Cruelty to animals.

SEC. 215. Every person who shall be guilty of cruelty to any horse, ox, mule, ass, or other domestic animal in any of the ways mentioned in this section, shall, upon conviction, be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment, viz:

First. By overloading, overdriving, overworking, or cruelly beating, torturing, tormenting, or mutilating any of said animals.

Second. By cruelly working any old, maimed, infirm, sick, or disabled domestic animal, or knowingly allowing the same to be done.

Third. By unnecessarily failing to provide any of said animals in his charge or custody, as owner or otherwise, with proper food, drink or shelter.

Fourth. By carrying or driving, or causing to be carried or driven, or kept, any of said animals in an unnecessarily cruel manner.

NOTE.—Section 215, Act of Feb 7th, 1881.

Injuring or destroying property of another.

SEC. 216. Every person who shall willfully, unlawfully, and maliciously destroy, burn, cut, or otherwise injure or destroy any goods, chattels, or other property of any description whatever, the property of another, shall, upon conviction thereof, be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

13th ses. p. 43

Same

SEC. 217. Every person who shall maliciously, unlawfully, and willingly break, destroy, or injure the door or window of any dwelling house, shop, store, or other house or building, or sever therefrom any gate, fence, or enclosure, or any part thereof, or any material of which it is formed, or sever from the freehold any produce thereof, or anything attached thereto, or pull down, injure or destroy any gate-post, railing, or fence, or any part thereof, or cut down, lop, girdle, or otherwise injure or destroy any fruit, or ornamental, or shade tree, being the property of another, shall, on conviction, be fined not more than one hundred dollars, or imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment, in the discretion of the court.

SEC 217,—Act of Feb 16th, 1883

Same.

SEC. 218. Every person who shall wilfully and maliciously burn or injure any pile or raft of wood, plank, boards, or other lumber, or any part thereof, or cut loose or set adrift any such raft, or part thereof, or shall cut, break, injure, sink, or set adrift, any boat, canoe, skiff, or other vessel or water craft, being the property of another, shall, on conviction thereof, be punished by fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months.

Same.

SEC. 219. Every person who shall wilfully and maliciously cut, break, injure, or destroy any bridge, mill-dam, canal, flume, aqueduct, reservoir, or other structure erected to create hydraulic power, or to conduct water for mining, manufacturing, or agricultural purposes, or any embankment necessary to the same, or either of them, or shall wilfully or maliciously make, or cause to be made, any aperture in such dam, canal, flume, aqueduct, reservoir, embankment, or structure, with intent to injure or destroy the same, shall, on conviction thereof, be fined in any sum not more than one thousand dollars, or imprisoned in the territorial prison not less than one year, nor more than two years, or both such fine and imprisonment.

Destroying or injuring jail, etc.

SEC. 220. If any person shall wilfully and intentionally break down, pull down, or otherwise destroy or injure, in whole or in part, any public jail, or other place of confinement, every person so offending shall, on conviction, be fined in any sum not exceeding ten thousand dollars, nor less than the value of said jail, or other place of confinement so destroyed, or of such injury as may have been done thereto by such unlaw-

—36

ful act, and be imprisoned in the territorial prison for any term not exceeding five years, nor less than one year.

12th ses p 48.

Setting fire to timber or grass.

SEC. 221. Any person who shall carelessly set fire to any timber, woodland, or grass, except for useful or necessary purposes, or who shall at any time make camp-fire, or shall light any fire for any purpose whatever, without taking sufficient steps to secure the same from spreading from the immediate locality where the same may be used, or shall fail in any instance to put out or extinguish said fire before leaving or abandoning the same, shall be deemed guilty of a felony, and upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars, or imprisonment in the territorial prison not less than one nor more than three years, or both such fine and imprisonment, and shall be liable for all damages resulting from such act.

12th ses. p. 49.

Same

SEC. 222. Any person who shall wantonly or designedly set fire to any timber, wood, or grass, for other than necessary purposes, or who shall, from a malicious intent, fail to extinguish any fire after making the same for a necessary purpose, before leaving or abandoning the same, shall be deemed guilty of a felony, and, upon conviction thereof, shall be fined in a sum not less than one hundred dollars, nor more than two thousand dollars, or be imprisoned in the territorial prison not less than two years nor more than seven years, or both such fine and imprisonment; and, in all cases arising under the provisions of this and the preceding section, one-half of the fine collected shall be paid to the person who shall furnish the information necessary to convict, and the other half shall be paid into the school fund of the county wherein such conviction is had.

Duty of county commissioners.

And the county commissioners of each county in this territory shall annually have printed on canvas, or some other durable substance, at least fifty copies of a notice, setting forth briefly the offences mentioned in sections 221 and 222, and the penalties therein prescribed, which said notices they shall cause to be conspicuously posted along the highways of their respective counties.

NOTE.—Secs. 221 and 222 Act of Feb 15th, 1881

Inoculation with contagious disease.

SEC. 223. Whoever inoculates himself, or any other person, with small-pox, or any other contagious disease, within this territory, or shall expose any clothing infected with such disease, with intent to cause the prevalence or spread of such disease, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than three years.

CHAPTER XIII.

MISCELLANEOUS OFFENCES.

Sec. 224. *Putting in circulation bill, check, ticket, promissory note, etc., to circulate as money.*
Sec. 225. *Doing business without license required by law.*
Sec. 226. *Charter for bridge or ferry not intended to prevent free passage of crossings of streams.*
Sec. 227. *Penalty for obstructing ford across stream.*
Sec. 228. *Firing gun, pistol or fire-arm in a town.*
Sec. 229. *Assaulting warden or keeper and breaking jail.*
Sec. 230. *Violating election laws when the question of changing the seat of government is submitted.*
Sec. 231. *Punishing empiricism.*
Sec. 232. *Driving animals over bridge faster than a walk; duty of commissioners.*
Sec. 233. *Toll roads and bridges to be kept in repair.*
Sec. 234. *Ditches and flumes to be kept in repair.*
Sec. 235. *Offences concerning branding, marking and driving cattle.*
Sec. 236. *Illegal killing of cattle; hides to be exhibited.*
Sec. 237. *Time of branding calves in certain counties restricted.*
Sec. 238. *Quantity of powder and other explosives to be kept stored in any city town or village restricted.*
Sec. 239. *Regulating storage of gunpowder and other explosives. Penalty.*
Sec. 240. *Injury to or unlawful interference with water or gas works, or meters.*
Sec. 241. *Saloon keepers prohibited from permitting minors to resort thereto or stop therein.*
Sec. 242. *Vagrancy and begging prohibited.*
Sec. 243. *Persons convicted of vagrancy can be compelled to labor on the public works.*
Sec. 244. *Penalty for refusing to labor.*
Sec. 245. *Duties of sheriff in cases of vagrancy.*

Sec. 246. *Penalty on conviction of vagrancy.*
Sec. 247. *Gunning or shooting on the premises of another without permission prohibited.*
Sec. 248. *Providing fire escapes in buildings hereafter erected.*
Sec. 249. *In buildings now erected.*
Sec. 250. *Punishment for violating section 248.*
Sec. 251. *For violating section 249.*
Sec. 252. *Prohibiting interference with contractor.*
Sec. 253. *Interfering with the work on mining claims.*
Sec. 254. *Abetting and advising.*
Sec. 255. *Of ditches and shafts near highways*
Sec. 256. *Prohibiting dance and hurdy houses.*
Sec. 257. *Of sale of intoxicating liquors to drunkards.*
Sec. 258. *Prohibiting selling of intoxicating liquor on day of general election.*
Sec. 259. *Sale of intoxicants in certain places prohibited.*
Sec. 260. *Same.*
Sec. 261. *Same.*
Sec. 262. *Penalty.*
Sec. 263. *Disposition of fines.*
Sec. 264. *Repealing section.*
Sec. 265. *Sale of intoxicants within two miles of railroad in process of construction.*
Sec. 266. *Penalty for non-performance of official duty.*
Sec. 267. *Liability to civil action for damages.*
Sec. 268. *Of fraud or oppression of officers.*
Sec. 269. *Of jurisdiction.*
Sec. 270. *Prohibiting killing certain animals.*
Sec. 271. *Penalty for using animals left for keeping.*
Sec. 272. *Stallion, mule, or jack not to run at large.*
Sec. 273. *Any person may castrate horse or jack found at large.*
Sec. 274. *Skinning cattle or sheep found dead prohibited—exceptions—penalty.*
Sec. 275. *Maliciously leaving gates open.*
Sec. 276. *Fraudulently using territorial auditor's engraved signature.*
Sec. 277. *Penalty for disseminating scab among sheep.*

Issuing, etc., bill, etc, to circulate as money

SEC. 224. If any person, association, corporation or company, unless authorized by some act of the Congress of the United States, shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or the paper of any bank, to circulate as money, the said person or persons, association, company, or corporation, or the person or persons forming the same, shall, for the first offence, be deemed guilty of a misdemeanor, and for each and every subsequent offence, be deemed guilty of a felony, and shall be punished as hereinafter provided. Any person or persons who shall, upon indictment, be convicted of having violated the provisions of this section, shall be punished, for the first offence, by imprisonment in the county jail not more than three months, or by fine not exceeding two thousand dollars, or by both such fine and imprisonment; and for the second, and every subsequent offence, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than five years, at the discretion of the court before whom such person or persons may be tried and convicted. It shall be the duty of the district attorney for each judicial district in the territory, to prosecute all offences against this section; and it shall be the duty of the judges of the courts to give this law in the charge of the grand jury, who shall inquire into and present all violations thereof: *Provided,* That the provisions of this section shall not be interpreted to include the passing of money which has been heretofore, or that shall hereafter be put in circulation by authority of the Dominion of Canada or by authority of the Kingdom of Great Britain.

NOTE—The last proviso of the preceding section is taken from the Act of January 27th, 1879

Doing business without license.

SEC. 225 Any person or persons who shall transact any business, trade, or occupation, or profession, for which a license is required by law, without first obtaining such license, shall be deemed guilty of a misdemeanor, and, upon conviction, be fined in any sum not less than twenty nor exceeding fifty dollars.

Free use of ford crossing stream

SEC. 226. No charter for a ferry or bridge company, granted by the legislature of this territory, shall be so construed as to authorize such company to exclude or prevent the public from the free use of any ford that may cross any stream at or near the ferry or bridge of said company.

Same

SEC. 227. The owner or keeper of such bridge or ferry shall not in any way obstruct the passage to or from any ford across any stream, and any person, upon conviction of obstructing any fording or ford, in any manner whatever, shall be liable to a fine of not less than fifty nor more than one hundred dollars.

Firing gun. etc, within town, etc

SEC. 228. That it shall be unlawful for any person to fire any gun, pistol or any fire-arm, of whatever description, within the limits of any town, city, or village in this territory, or within the limits of any private enclosure which shall contain a dwelling house.

All persons violating this section shall be fined in any sum not less than five, nor more than twenty-five dollars.

That all fines collected under the provisions of this section shall be paid into the county treasury, for the benefit of the school fund.

NOTE.—Act April 26th, 1873

Escaping from prison.

SEC. 229. If any prisoner confined in the penitentiary of this territory shall assault the warden, or any under keeper, guard, or other officer of said penitentiary, or shall escape, or attempt to escape therefrom, or enter into any conspiracy for the purpose of effecting an escape therefrom, such person, upon conviction thereof, shall be sentenced by the court to the same term of imprisonment in the penitentiary for which such person was originally sentenced, to commence from the expiration of the original term of imprisonment, except when the original sentence was imprisonment for life.

If any person confined in any jail in any county in this territory shall break such jail, or escape therefrom, or attempt so to do, or shall break or destroy the furniture of such jail, or shall assault any keeper of such jail, such person, on conviction thereof, shall be imprisoned in the penitentiary at hard labor for a time not exceeding three years, nor less than one year.

It shall be the duty of the warden of the penitentiary, and the keeper of any county jail in this territory to post up in the cells of the penitentiary and county jails, respectively, a printed copy of this section, printed in large letters so as to be easily read.

NOTE.—Act May 8, 1873.

False voting at election upon question of changing seat of government

SEC. 230. If any person within this territory at any election, when the question of location of the seat of government is by law submitted to the electors for their approval or rejection, shall offer to vote thereon, knowing that he is not qualified so to vote, according to the law now in force, defining the qualifications of electors in this territory, or who shall have voted once before at said election thereon, the person or persons so offering to vote thereon, whether his vote is received or rejected, shall be deemed guilty of a misdemeanor, and being thereof convicted, shall be punished by a fine not less than one hundred nor more than one thousand dollars, and by imprisonment not less than one nor more than twelve months, in the discretion of the court.

Malfeasance of election officer

If any judge or clerk of election, or county clerk, or commissioner, or any other officer or person charged by the laws now in force with any duty, at such election, shall knowingly receive the vote of any person not qualified to vote at such election, or shall make any forged, false or fraudulent returns, or certify to such returns, or shall thereafter alter any true returns, or wilfully miscount, change, alter or vary, any poll book, list, vote, or return, or shall certify to any fact not true, or shall do any other thing whatever to defeat the actual and true return and count of all lawful votes cast on that question, and none others than such lawful votes, or shall do or perform any act whatever, with the intent and for the purpose of procuring any other person to make any false return, or count, or certificate, every such person so offending shall be deemed guilty of a felony, and being thereof convicted, shall be punished by imprisonment in the territorial penitentiary, not less than one year nor more than three years, and shall be forever thereafter incapable of holding any office of trust, honor, or profit in the Territory of Montana.

NOTE—Act February 12, 1874

Who may practice medicine

SEC. 231. That it shall be unlawful for any person within the limits of said territory, who has not attended two full courses of instruction and graduated at some school of medicine, either of the United States or some foreign country, or who cannot produce a certificate of qualification from some state or county medical society, and is not a person of good moral character, to practice medicine in any of its departments, for reward or compensation, or attempt to practice medicine, or prescribe medicine or medicines for reward or compensation, for any sick person within the said Territory of Montana: *Provided*, That in all cases when any person has been continuously engaged in the practice of medicine for a period of ten or more years, he shall be considered to have complied with the provisions of this section; and that where persons have been in continuous practice of medicine for five years or more they shall be allowed two years in which to comply with such provisions.

Any person living in the Territory of Montana, or any person coming into said territory, who shall practice medicine in any of its departments, or perform or attempt to perform any surgical operation upon any person within the limits of said territory, in violation of this section, shall, upon conviction thereof, be fined not less than fifty nor more than one hundred dollars, and for each subsequent violation of this section, shall, in addition to the above fine, be imprisoned in the county jail of the county in which said offence shall have been committed, for the term of thirty days, and in no case wherein this section shall have been violated shall any person so violating receive any compensation for services rendered; *Provided*, That nothing herein contained shall in any way be construed to apply to any person practicing dentistry.

NOTE.—Act February 3rd, 1876.

Fast driving over public bridge

SEC. 232. *First.* It shall hereafter be unlawful for any person or persons to ride or drive any animal over or across any public bridge, crossing any stream or river in the Territory of Montana, faster than a walk. And any person violating the provisions of this clause shall be adjudged guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not less than fifty dollars, or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment.

Driving loose stock over bridge.

Second. It shall hereafter be unlawful for any person or persons to drive any loose stock, such as horses, mules or cattle, over or across any public bridge, crossing any stream or river in the Territory of Montana, in a larger number than fifteen head of such loose stock, at any one time. And any person violating the provisions of this clause, shall be adjudged guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not less than fifty nor more than one hundred dollars, or by imprisonment in the county jail not exceeding sixty days, or by both such fine and imprisonment.

It shall be the duty of the board of county commissioners to cause to be posted at each end of all bridges coming under the provisions of this section, notices setting forth substantially the provisions of this section

NOTE.—Act February 5th, 1876.

Owner of toll road to keep same in repair.

SEC. 233. That any person or persons owning or possessing any unexpired right or title to or on any toll road or bridge, upon which toll is collected, under any charter or franchise heretofore granted by any legislative assembly of Montana Territory, shall be compelled to keep said road or roads, bridge or bridges, in a thorough state of repair.

Any party or parties not complying with the provisions of this section, shall, upon the complaint of any citizen of said territory, be deemed guilty of a misdemeanor, and, upon conviction of the same before any court of competent jurisdiction, be liable to a fine of not less than twenty-five, nor more than one hundred dollars, and be adjudged to pay all costs of prosecution, or be imprisoned in the county jail for a term not less than ten nor more than sixty days.

NOTE—Act February 11th, 1876

Ditches to be kept in repair

SEC. 234. The owners of all ditches or flumes shall keep the same in such repair so that the water therein shall not overrun the sides thereof and run into and upon any public highway in the Territory of Montana.

Should the water of any ditch or flume at any time overflow its banks, and run into or upon any public highway, by reason of the negligence of the owner, the owner thereof shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be fined in a sum not less than fifty dollars nor more than one hundred dollars.

It is hereby made the duty of all road supervisors, in their respective districts, to prosecute all persons violating the provisions of this section, and any such supervisor failing to perform the duty herein required of him shall be subject to a fine of not less than twenty dollars nor more than fifty dollars.

NOTE---Act February 1st, 1877

Marking or branding property of another.

SEC. 235. If any person or persons shall hereafter mark, brand, kill, sell or cause to be marked, branded, killed, or sold any horse, mule, or cow, calf, sheep, swine or other animal the property of another person, whether the same be done by mistake or otherwise, such person or persons so marking, branding, killing, or selling any such animal or causing the same to be done, shall pay to the owner of the same three times the value thereof; and any such owner shall have the right to sue, in any court of competent jurisdiction, and recover from any such person or persons, marking, branding, killing, or selling as aforesaid, three times the value of the animals so marked, branded, killed or sold. That if any person or persons shall cut off either or both ears close to the head of any cow, calf, ox, sheep or swine, he or they shall be deemed

Cutting off ears of cow, etc.

guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than five dollars nor more than twenty-five dollars, or be imprisoned in the county jail for a period not less than five days nor more than thirty days at the discretion of the court.

Driving stock from range

That any person or persons who shall drive, or cause to be driven, any cattle, horses, mules, sheep, or swine, from their customary range, without the permission of the owner thereof, shall be deemed guilty of a misdemeanor, and on conviction thereof before any justice of the peace in the Territory of Montana, may be fined in any sum not less than five dollars nor more than one hundred dollars, or may be imprisoned in the county jail for a period not less than ten days nor more than ninety days, or by both such fine or imprisonment, at the discretion of the court. All fines collected under the provisions of this section shall be paid into the common school fund of the couny where such offence was committed.

NOTE—Section 235 is as amended by "An act to amend section 192 of the Fourth Division of the Revised Statutes of Montana," approved March 10, 1887. The remaining portion of said act, being the first clause thereof, is in the following words. "Section 1. That section 192 of the Fourth Division of the Revised Statutes of Montana be amended to read as follows"

13th ses. p 115

Butcher must preserve hides of animals killed

SEC. 236. Any person or pérsons, save a licensed butcher, who shall offer any beef for sale at wholesale or. retail, shall expose to the purchaser the hide or hides of such animals, and shall preserve the said hides ten days at his usual place of abode, and permit the same to be inspected by any and all persons; and any person violating the provisions of this section shall be guilty of a misdemeanor, and be punished by a fine not to exceed one hundred dollars or imprisonment in the county jail not to exceed three months, or by both such fine and imprisonment, in the discretion of the court.

NOTE—Section 236 act of March 3, 1883.

Branding stock at certain seasons.

SEC. 237. It shall be unlawful for any person to brand or mark any calf or other cattle that are running at large between the 1st day of December of each year and the 10th day of the month of May following; *Provided*, that any owner of stock may brand on his own premises at any time in the presence of two responsible citizens. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction before any court of competent jurisdiction shall be punished by a fine of not less than $25.00 nor more than $100 for each and every animal thus branded, or by imprisonment in the county jail for a term not exceeding six months, or may be punished by both such fine and imprisonment, in the discretion of the court.

NOTE—Section 237 is as amended by "An act to amend section 1 of an act entitled an act to prevent the branding of cattle during certain seasons of the year, approved March 10, 1885," approved February 1, 1887 The remaining portion of said act of February 1, 1887, being the first clause thereof, is in the following words. "That section 1 of an act entitled an act to prevent the branding of cattle during certain seasons of the year, approved March 10, 1885, be amended so as to read as follows."

13th ses. p 89

Keeping explosives within town, city, etc

SEC. 238. No person or persons, company or corporation, shall store, deposit or keep, in any city, town or village in this territory, any gunpowder, giant or hercules powder, nitro glycerine, gun-cotton, dynamite, or other powerful or dangerous explosives, of a greater quantity than will be sufficient to meet the demands of retail trade, or than may be necessary for the actual and present use of the person or persons, company or corporation, keeping or storing the same.

Same

SEC 239. No person or persons, company or corporation, shall store, deposit or keep, within the limits of any city, town or village in this territory, or within one mile of any residence, any large quantity of gun powder, giant or hercules powder, nitro-glycerine, gun cotton, dynamite, or other dangerous or powerful explosives, nor establish or keep any powder house, magazine or storehouse where such explosives are stored or kept. Any person or persons, company or corporation, storing, depositing or keeping, any of the aforementioned explosives, or any dangerous explosives, as prohibited in this and the preceding section, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not to exceed one hundred dollars for each offence.

NOTE—Sections 238 and 239, act of March 1, 1883

14th ses. p. 85

Injury to gas fittings or water pipes.

SEC. 240. Every person who shall wilfully or fraudulently injure or cause to be injured any meter, pipe or fittings, connected with or belonging to any gas-light company, or connected with or belonging to the water-works of any corporation, company or person in this territory, supplying water at a stipulated rate of payment, or shall wilfully tamper or meddle with any other of the appliances or appurtenances connected with or belonging to any such gas-light company, or to the water-works of such corporation, company or person in such manner as to cause loss or damage to said company, or corporation or person, or who shall wilfully or fraudulently prevent any meter used for the purpose of registering the quantity of gas or water supplied through the same from duly registering the quantity so passing through the same, or alter the index of any such meter, or in any way, hinder, or delay, or interfere with its proper action or just registration, or shall fraudulently burn the gas of any such corporation, company or person, or fraudulently use the water passing through such meter, pipe, fittings, or other of the appliances or appurtenances connected with or belonging to such gas-light company, or water-works of such company or person, or wilfully waste said gas or water, shall be guilty of a misdemeanor, and, upon conviction shall be fined any sum not exceeding one hundred dollars, or imprisoned in the county jail not longer than thirty days, or both such fine and imprisonment, in the discretion of the court.

NOTE.—Section 240, act of March 12, 1885

13th ses. p. 51

Permitting minors to resort in saloon.

SEC. 241. Any person or persons who, keeping a saloon or dram shop, or gaming house, or other place of resort wherein intoxicating liquors are sold by retail, or games of chance are played, shall permit any minor to resort to or stop therein, shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be fined in any sum not less than ten dollars, nor more than one hundred dollars, or be imprisoned in the county jail not less than one nor more than thirty days, or by both fine and imprisonment.

12th ses. p. 74.

All fines collected under the provisions of this section shall be paid into the county treasury, for the benefit of the school fund of the county in which such conviction is had.

NOTE.—Section 241, except last paragraph, Act March 3, 1883 Last paragraph of section 241 Act February 14, 1881

12th ses. p 81.

Vagrants.

SEC. 242. Every idle and dissolute person, without visible or known means of living, who has the physical ability to work, and who does not for the space of ten days make proper inquiry for, and use due diligence to seek employment, nor labor when employment is offered to him; also, every healthy beggar who solicits alms as a business; also, every person who makes a practice of going from house to house begging food, money, or other articles, or seeks admission to such houses upon frivolous pretexts; every lewd and dissolute male person who lives in and about houses of ill-fame; also, every lewd and dissolute female person, known as a street walker or common prostitue, who shall, upon the public streets or in and about any public place or assemblage, or in any saloon, bar-room, club-room, or any other public or general place of resort for men, or anywhere within the sight or hearing of ladies or children, conduct or behave herself in an immodest, drunken, indecent, profane, or obscene manner, either by action, language, or improper exposure of her person; every common drunkard who is in the habit of lying around the streets, alleys, sidewalks, saloons, bar-rooms, or other public places in a state of gross intoxication, upon conviction thereof, shall be deemed a vagrant, and punished as hereinafter provided.

12th ses p. 82.

Punishment of vagrancy

SEC. 243. All male persons having the physical ability to work, convicted of vagrancy and imprisoned on judgment therefor, may be required to perform labor on the public works, buildings, grounds, or ways in the county, and the sheriff or other person or persons having them in charge while performing such labor may, in his discretion, employ any usual, humane and sufficient means to guard against and prevent such persons escaping from custody while being so employed. For each and every day's work willingly and faithfully performed by such vagrant, he shall receive credit for two day's time, which shall be by the sheriff applied upon and deducted from his term of imprisonment.

12th ses. p. 82

Same.

SEC. 244. If any imprisoned vagrant convicted under the provisions of section 242, having the physical ability to work and refuse to work when required so to do, as provided in section 243, he may, as a punishment, be forced to work by being compelled to pack sand or any other material and weight, from place to place, or to perform other labor, not unreasonable or inhuman, or too burdensome, until he declares himself willing to work, and does work as required; or in lieu thereof, he may, in the discretion of the sheriff, be confined in the cell of the jail, and fed upon no other food except bread and water, until he declares himself ready to work, as required herein, but both methods of punishment herein prescribed shall in no instance be inflicted at the same time.

Employment of vagrants

SEC. 245. It shall be the duty of the sheriff, during fair and reasonable weather, when the same can be done without extra expense to the county, to procure employment for and set at work such convicted vagrants who are serving out their term of imprisonment.

Penalty for violation of vagrant law.

SEC. 246. All persons violating any of the provisions of section 242 shall be punished by imprisonment in the county jail for a term not exceeding thirty days for a first offence, and not exceeding ninety days for each subsequent offence. Nothing in sections 242, 243, 244 and 245 shall be construed as depriving any incorporated town or city, incorporated under the laws of this territory, from punishing vagrancy.

NOTE.—Sections 242, 243, 244, 245 and 246, act of Feb. 22d, 1881.

14th ses p 104

Unlawful hunting upon grounds of another.

SEC. 247. It shall be unlawful for any person or persons to hunt with gun or dog within the enclosed grounds or lands of another, or to shoot into or upon such enclosed grounds or lands, without first obtaining from the owner, agent, or occupant of such enclosed grounds or lands, his, her, or their permission so to do. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be fined in a sum not less than five dollars, nor more than one hundred dollars, or imprisonment in the county jail not more than three months, or by both such fine and imprisonment.

NOTE.—Section 247, Act of February 27th, 1885

Openings in public buildings.

SEC. 248. That all buildings hereafter erected to accommodate public assemblies, including churches, schools, concert halls, court houses, theatres, ballrooms, and other buildings which are now or hereafter intended to be used as places of public assemblies of any kind or character, in the Territory of Montana, shall be constructed with a view of securing an escape in the event of a fire or alarm of fire, and all such buildings hereafter erected shall have the openings for ingress or egress furnished with doors which, in all cases, shall be so hung on hinges as that they shall open outwardly from the rooms in and from the main building itself.

Same.

SEC. 249. All such buildings now erected that are not constructed as provided in section 248 shall within one year after the passage of this section be so altered as to comply with its provisions.

Same.

SEC. 250. All persons constructing, owning, controlling, or in custody of any building, which shall be hereafter erected, and which is mentioned in section 248 of this chapter, and not constructed in accordance with the provisions thereof, shall be deemed guilty of a misdemeanor, and, upon conviction in a court of competent jurisdiction, shall be punished by a fine of not less than one hundred dollars nor more than five hundred; and such building or buildings shall be closed by the court until the doors thereof shall be made to conform to the provisions of section 248.

Same.

SEC. 251. That all persons owning, controlling, or in custody of any building in this territory, described in section 248, who shall fail to comply with the provisions of section 249 shall be guilty of a misdemeanor, and on conviction thereof in any court of competent jurisdiction shall be punished by a fine of not more than fifty dollars, and such building shall be closed by the court until the doors thereof shall be made to conform to the provisions of sections 248 and 249.

NOTE.—Sections 248, 249, 250 and 251 comprise the Act of February 16th, 1877

Unlawful interference with laborer, etc

SEC. 252. Every person who by force, or fraud, or by threats, or intimidation, either by words, or writing, or actions, or exhibition of force, shall prevent, or interfere with, or hinder, or delay, any contractor, mechanic, laborer, workman, or employe, in the performance of any lawful contract, work, labor or employment, for any person or company, or upon any terms, or at any price, or wages, to which such contractor, mechanic, laborer, workman, or employe, may have agreed, or for which he may desire to work, or labor, or contract, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than fifty nor more than one hundred dollars, or by imprisoment in the county jail not exceeding three months, or by both such fine and imprisonment.

Same

SEC. 253. Every person who, by force or fraud, or by threats of injury to person or property, or intimidation, either by words, or writing, or actions, or exhibition of force, or otherwise, and without authority of law, shall prevent or interfere with, or hinder or delay, any person, company or corporation, in the lawful use, or working, or enjoyment, or control, of any mining claim, mill, works, machinery, or other property, or in the lawful management. direction and control of any workmen, or employe, of such person, company or corporation, or in the working or performance by such person, company or corporation, of any lawful contract or agreement for hiring, or work, or labor, or other services, shall be guilty of a misdemeanor and on conviction shall be punished as prescribed in section 252.

Same.

SEC. 254. Every person who shall knowingly aid, abet, assist, advise or encourage, any other person or persons to commit any of the offences mentioned in sections 252 and 253, and every person who, knowing any of such offences to have been committed, shall assist or aid the offender in escaping arrest, or trial, shall be guilty of a misdemeanor, and, on conviction, shall be punished as provided in section 252.

NOTE.—Sections 252, 253 and 254 are as amended by "An Act to repeal sections 201 and 202 and to amend sections 198, 199 and 200, of the Fourth Division of the Revised Statutes of Montana," approved February 25, 1887, and comprise all of said act except the introductory clause to each of said sections in the following words: "That section (198, 199, and 200 respectively) of the Fourth Divison of the Revised Statutes of Montana, be amended so as to read as follows:" and excepting also the concluding section of said act in the following words "Section 4 That sections 201 and 202, of the Fourth Division of the Revised Statutes of Montana be and the same are hereby repealed."

Leaving opon shaft or cut within twenty feet of highway.

SEC. 255. That any person or persons who may hereafter sink any shaft or run any drift, or cut or cause the same to be done within twenty feet of any trail, road or public highway, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, in any court having competent jurisdiction, shall be fined in a sum of not less than five nor more than fifty dollars at the discretion of the court, and shall be liable for all damages which may be sustained by any person or persons by reason of such shaft, drift, drain or cut *Provided*, That such person or persons sinking such shaft, or running such drift, drain or cut, do not, within ten days after the same shall have been sunk, run or cut, place a substantial covering or fence over or around such shaft, drift, drain or cut: *Provided further*, That farmers may cut irrigating ditches, and miners may cut mining ditches any depth not exceeding three feet, without being made liable to the provisions of this section.

All fines collected under the provisions of this section shall be paid into the county treasury for the benefit and use of the common schools of said county.

NOTE—Act of December 27, 1871.

14th ses. p. 86.

Keeping, etc., hurdy house, etc.

SEC. 256. It shall be unlawful for any person or persons within this territory, to establish, keep, conduct or maintain any dance house, commonly known or called hurdy house, or hurdy gurdy house, or to allow or permit any dance, commonly known or called a hurdy dance, or hurdy gurdy dance, upon his or her premises, or premises leased or occupied by him or her, or to give, sell, or dispose of any malt, vinous, spiritous or intoxicating liquors of any kind whatsoever, to any person or persons engaged or participating in any dance, commonly known or called a hurdy dance, or hurdy gurdy dance, or knowingly to give, sell or dispose of any such intoxicating liquors at intervals between such dances to any person or persons engaged in such dance, during the day or night in which the same is carried on, and any person or persons violating the provisions of this act, shall, for the first offence, be fined in a sum not exceeding one hundred dollars; for the second offence or any offence thereafter, shall be fined in a sum not less than one hundred nor more than three hundred dollars, or imprisoned in the county jail not exceeding six months, or both such fine and imprisonment; and it shall be the duty of all peace officers in this territory to enforce the provisions of this act by making complaint against any person or persons violating the same in all cases coming under their observation or to their knowledge.

NOTE—Section 256, Act of March 12, 1885.

Furnishing intoxicating liquor to habitual drunkard

SEC. 257. That any person who shall sell or give intoxicating liquors to any man or woman who is in the habit of becoming drunk or intoxicated, or of drinking intoxicating liquors to excess, after being notified of such habit, or coming to a knowledge thereof, or who shall sell or give intoxicating liquors to any minor, without the consent of the parent or guardian of such minor, shall be liable in damages to any person who may be injured thereby, in money, property, or means of support, and such person so selling or giving intoxicating liquors as aforesaid, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty dollars, or by imprisonment in the county jail not exceeding thirty days, or both such fine and imprisonment, in the discretion of the court.

Any married woman may sue in her own name, and a minor, by guardian or next friend, for the purpose of recovering the damages named in this section and costs of suit.

NOTE—Section 257, Act of April 30, 1873.

13th ses. p. 43

Selling liquor on election day

SEC. 258. Hereafter it shall be unlawful for any person, either as principal, agent, or otherwise, on any general election day to sell, barter, give, or furnish, or cause to be furnished, to any person or persons whomsoever, any spirituous or malt liquors, wine or cider, or any intoxicating liquors, or intoxicating drinks of any kind or character. That each and every person violating any of the provisions of this section shall, for each offence, upon conviction thereof, be punished by a fine not less than ten dollars, nor more than one hundred dollars, or imprisonment in the county jail for not more than one month, or by both such fine and imprisonment, in the discretion of the court. The provisions of this section shall not be construed to include druggists or other persons who shall in good faith sell or dispose of the articles hereinbefore mentioned for medicinal or mechanical purposes only.

NOTE.—Section 258 Act of Feb 16th, 1883.

Sale of intoxicants prohibited in certain places.

SEC. 259. It shall hereafter be unlawful in this territory for any person, or persons, company, association, firm or corporation, to sell or to give away or to deliver any malt, vinous, spirituous or intoxicating liquors of any nature, in any variety theatre or variety show or any place wherein is operated, conducted, or played any dramatic, operatic, minstrel, vaudeville, sketch acts, or theatrical play or performance.

Same

SEC. 260. It shall hereafter be unlawful in this territory for any person or persons, company, association, firm or corporation, to sell, or to give away or to deliver any malt, vinous, spiritous or intoxicating liquors of any nature in any place where public dancing is engaged in.

Same.

SEC. 261. That hereafter it shall be unlawful for any person or persons, company or corporation to sell or dispose of any spiritous, vinous or malt liquors in any room, hall or other place where women or minors are employed or are allowed to assemble for the purpose of the business therein carried on.

Penalty

SEC. 262. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars, nor more than three hundred dollars and costs of prosecution, or imprisonment in the county jail not less than thirty days, nor more than three months, or by both such fine and imprisonment.

Disposition of fines

SEC. 263. All fines collected under the provisions of this act shall be paid into the county treasury for the use and benefit of the common school fund of the county in which the offence was committed.

Repealing section.

SEC. 264. All acts and parts of acts in conflict with this act be and the same are hereby repealed.

NOTE.—Sections 259, 260, 261, 262, 263 and 264 are sections 1, 2, 3, 4, 5, and 6, and comprise all of "An act to prevent the sale of intoxicants in variety theatres," approved February 18th, 1887

SEC. 265. Any person or persons who shall hereafter establish or maintain any saloon or other place

Sale of intoxicants within two miles of any railroad in process of construction prohibited.

hereafter established wherein or connected with which any intoxicating, spiritous, malt brewed or fermented liquor, cider or wine, or any liquor beverage or liquid containing any intoxicating, spiritous, malt brewed, fermented or vinous liquor is sold, given or furnished to any person or persons within two (2) miles of the line of any railroad grade in course of construction or on which track is being laid, shall be deemed guilty of a misdemeanor, and, on conviction thereof for the first offence, shall be punished by a fine of not less than twenty dollars, nor more than fifty dollars and costs of prosecution, and in default of the payment thereof, shall be imprisoned in the county jail for thirty days; and for the second offence shall be punished by a fine of not less than fifty dollars, nor more than one hundred dollars and costs of prosecution, and imprisonment in the county jail not less than ten days, nor more than sixty days, in the discretion of the court; and in case such fine and costs shall not have been paid at the time such imprisonment expires, he, the person serving out such sentence, shall be further detained in jail until such fine and costs shall have been fully paid; *Provided*, That the term of imprisonment for any single offence shall not exceed ninety days; each violation of the provisions of this act shall be construed to constitute a separate and complete offence, and for such violation on the same day or on different days the person or persons offending, shall be liable to the forfeitures and penalties hereof; *Provided, however*, That this act shall not apply to any saloon or other places established or maintained within the limits of any incorporated town, city or village, or any legally established townsite, wherein exists a postoffice established by the United States.

Penalty.

Proviso.

NOTE—Section 265 comprises "An act prohibiting the sale of intoxicating liquors within two miles of any railroad in process of construction," approved March 9th, 1887

Neglect of duty

SEC. 266. If any officer, board, or commission charged by law with any official duty, shall neglect or wilfully fail or refuse to fully do, perform or discharge such duty, such officer, and the members comprising such board, or commission, responsible therefor, shall be deemed guilty of a misdemeanor, and being thereof convicted, shall be punished by a fine not less than twenty-five dollars nor more than one thousand dollars, or by imprisonment of not less than ten days nor more than one year, or by both such fine and imprisonment, in the discretion of the court. And if such imprisonment shall not be for more than three months, the same shall be in the county jail of the county in which such offence was committed; but if the said imprisonment shall exceed three months, then such imprisonment shall be in the penitentiary.

Same.

SEC. 267. If any officer or member of any board or commission shall be convicted of a violation of section 266, such officer or member or such board or commisson, shall be liable to the municipality damaged by such neglect, failure or refusal, for any and all damages which such municipality has suffered thereby, recoverable in an action brought for that purpose, as are other actions at law.

Fraud, oppression, etc., under color of authority.

SEC. 268. If any officer or the members of any board or commission, under color of their office, shall be guilty of any fraud, oppression, extortion, or deceit, they shall be deemed guilty of a misdemeanor, and shall also be liable to the party injured thereby to the extent of such damage, with exemplary damages, if the same was malicious. And if any such officer or member shall be convicted of the misdemeanor in this section defined, he shall be punished by a fine of not less than ten nor more than five hundred dollars, or may be imprisoned in the county jail not less than ten days nor more than six months, or by both such fine and imprisonment, in the discretion of the court.

Jurisdiction.

SEC. 269. The district court shall have jurisdiction of the misdemeanor herein defined, and the district judge shall give in charge to the grand jury the misdemeanor defined in section 266 and charge them that they shall diligently enquire and duly present all persons violating the same.

NOTE —Sections 266 to 269, both inclusive, comprise the Act of February 11th, 1876

Killing buffalo or bison in certain counties.

SEC. 270. That any person who shall wilfully shoot, or otherwise kill, for the period of ten years from and after the passage of this section, any buffalo or bison within the counties of Madison, Jefferson, Deer Lodge and Lewis and Clarke, Montana Territory, shall be fined not less than one hundred dollars, nor more than two hundred dollars; or imprisoned in the county jail not less than two months and not more than six months, or, both such fine and imprisonment, at the discretion of the court.

That the possession of the green hides, or the dead bodies, or any part thereof, of any buffalo or bison, by any person, or persons, within the limits of said counties, shall be taken as *prima facie* evidence that such person or persons are guilty of killing the same.

Any person informing on any person violating the provisions of this section shall, upon the conviction of such person, be entitled to one-fourth of the fine collected.

It is hereby made the duty of the judges of the district courts held in the respective counties of Deer Lodge, Jefferson, and Lewis and Clarke, to give in charge to the grand juries of said counties the provisions of this section.

NOTE—Act February 21st, 1879.

R. S. p 402.

Use of animal left with stable keeper, etc.

SEC. 271. If any person keeping a public ranch or stable shall use, or allow to be used, without the consent of the owner, any horse, ox, mule, or ass, that may have been left with him to be ranched or fed, he shall forfeit to the owner all ranch or stable fees that may be due upon such animal used, and the additional sum of twenty-five dollars for each day such animal may have been used, to be collected in the same manner as other debts.

Ex ses. p 12

Stallion running at large

SEC. 272. If any stallion or stud horse, ridgeling, or any unaltered male mule or jackass, over the age of eighteen months, be found running at large, the owner shall be fined for the first offence ten dollars, and for each subsequent offence not more than fifty nor less than twenty-five dollars, to be recovered by civil action, before a justice of the peace, in the name of any person who will prosecute the same, one half to his own use, and the other half to the use of the county.

NOTE.—Section 272 Act of July 21st, 1879.

R S. p 404.

Same.

SEC. 273. Any person may take up any such horse, mule, or jackass, found running at large, and if not claimed in five days, may castrate him, such castration being performed in the usual manner, so that the life of the animal be endangered as little as possible.

12th ses p 3.

Skinning dead animal without consent of owner

SEC. 274. Any person or persons who may skin, or remove from the carcass any part of the skin, hide, or pelt of any neat cattle or sheep found dead, without written permission from the owner or owners, shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be fined in any sum not less than ten dollars, nor more than one hundred dollars for each offence committed: *Provided*, Nothing herein shall be deemed to prevent the skinning of animals killed by railroad companies, by the employes of any railroad company by which such stock may have been killed. The parties skinning any stock, as authorized under the provisions of this section to skin said stock, shall be compelled to remove the same a distance of not less than one-fourth of a mile from any occupied house. A failure to comply with the foregoing provision by any party or parties so skinning said stock, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not to exceed twenty dollars for the first offence, and for each subsequent offence twenty dollars.

NOTE.—Section 274 Act of February 22d, 1881.

12th ses. p. 48.

Leaving open gate of enclosure.

SEC. 275. Any person who shall knowingly, wilfully and maliciously leave open any gate leading into or out of any enclosed premises, whether enclosed by a lawful fence or not, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not exceeding twenty-five dollars, or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment.

NOTE.—Section 275 Act of February 23, 1881

14th ses. p. 129

Forgery of signature of territorial auditor.

SEC. 276. Whoever, with intent to defraud, uses, utters or publishes, or attempts to use, utter or publish, any license or tax receipt authorized to be signed by the territorial auditor by means of a stamp or press engraved with and imprinting a *fac simile* of his sign manual, knowing such signature to have been affixed thereto falsely, and without the authority of the territorial auditor, shall be deemed guilty of forgery, and punished accordingly.

NOTE.—Section 276, Act of March 12, 1885

R. S. p. 416

Carrying disease among sheep.

SEC. 277. Any person who shall carry or drive, or cause to be carried or driven, one or more sheep affected with the scab, or any infectious or contagious disease, into a herd of sheep belonging to another person, or shall carry or cause to be carried the parasite which causes such scab or disease, and place it where another person is corralling or herding sheep, so that such sheep may become affected thereby, shall be adjudged guilty of a felony, and, upon conviction thereof, shall be confined in the territorial prison not less than five years nor more than ten years, and be fined in any sum not less than one thousand dollars.

NOTE.—Section 277 Act of Feb. 21, 1879

CHAPTER XIV.

GENERAL PROVISIONS.

Sec. 278. Crimes at common law not herein enumerated—punished.
Sec. 279. Effect of sentence of imprisonment in penitentiary.
Sec. 280. Restoration to civil rights.
Sec. 281. Term "person" defined.
Sec. 282. Provisions of this act extend to females.
Sec. 283. Sufficient to show when intent to injure or cheat is required by law.
Sec. 284. Governor may issue reward for escaped felon.
Sec. 285. Attempt to commit public offence—how punished.
Sec. 286. Repealing clause.
Sec. 287. Reward for the capture of robbers.

Punishment for common law crimes

SEC. 278. All offences recognized by the common law as crimes, and not here enumerated, shall be punished, in case of felony, by imprisonment in the territorial prison for a term not less than one year, nor more than five years; and in case of misdemeanor, by imprisonment in the county jail for a term not exceeding six months, nor less than one month, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. And whenever any fine is imposed for any felony or misdemeanor, whether such be by statute or at common law, the party on whom the fine is imposed shall be committed to the county jail, when not sentenced to the territorial prison, until the fine is paid; and he shall be imprisoned at the rate of one day for each two dollars until such fine is paid.

Loss of civil rights

SEC. 279. A sentence of imprisonment in the territorial prison for a term less than life suspends all civil rights of the person so sentenced during the term of imprisonment, and forfeits all public offices and all private trusts, authority, and powers; and the person sentenced to such imprisonment for life shall thereafter be deemed civilly dead.

Restoration of civil rights.

SEC. 280. In all cases where persons convicted and sentenced to the territorial penitentiary, have served the time for which they were sentenced and have been discharged, the governor shall have the power whenever he may deem it proper, to grant to such discharged convicts, all rights of citizenship lost by such sentence or imprisonment.

NOTE.—Section 280 is section 1 and comprises all of "An act authorizing the governor to restore the rights of citizenship to discharged convicts," approved March 7th, 1887.

Meaning of the term "person"

SEC. 281. When the term "person" is used in this chapter to designate the party whose property may be the subject of any offence, such term shall be construed to include the United States, this territory, or any other territory, or state government, or county which may lawfully own any property within this territory, and all public and private corporations, as well as individuals.

Females included.

SEC. 282. The provisions of this chapter shall extend to females.

What intent sufficient.

SEC. 283. When any intent to injure, defraud, or cheat, is required by law to be shown, in order to constitute any offence, it shall be deemed sufficient if such intent be to injure, defraud, or cheat the United States, this territory, or any other state, territory, or county, or the government, or any public office thereof, or any county, city, or town, or any corporation, body politic, or private individual.

Reward offered by governor.

SEC. 284. If any person who has been sentenced to confinement in the territorial prison by any court having competent authority within this territory, shall escape therefrom, or shall be charged with murder, or the perpetration of any crime punishable with death, the governor is authorized, upon satisfactory evidence of the guilt of the accused, to offer a reward for his or her apprehension, which reward shall not exceed the sum of one thousand dollars, and shall be paid out of the territorial treasury; and the amount which any governor or acting-governor of this territory may offer as a reward for the apprehension of any prisoner, as aforesaid, is hereby appropriated out of the territorial treasury, to be paid out of any money not otherwise appropriated; and it is hereby made the duty of the territorial auditor to issue to the person or persons whom he may determine is entitled to such reward, a warrant on the territorial treasurer therefor.

Punishment for attempt to commit crime.

SEC. 285. Every person who shall attempt to commit a public offence, and in such attempt shall do any act toward the commission of such offence, but shall fail in the perpetration thereof, or shall be prevented or intercepted in executing the same, upon conviction thereof, in cases where no provision is made by law for the punishment of such attempt, shall be punished as follows:

First. If the offence so attempted to be committed be such as is punishable by death, or by imprisonment in the territorial prison for a term which may extend to life, the person convicted of such attempt shall be punished by imprisonment in the territorial prison not exceeding ten years.

Second. If the offence so attempted is a misdemeanor, the person so convicted shall be punished by a fine not exceeding one-half of the largest amount, or by imprisonment in the county jail or territorial prison, as the case may be, for a term not exceeding one-half the longest time prescribed by law, upon a conviction of the offence so attempted.

Third. If the offence so attempted is a felony not punishable by death or imprisonment which may extend to life, the person convicted of such offence shall be punished by imprisonment in the territorial prison not exceeding one-half the longest time which may be imposed on conviction of the offence so attempted.

Repeal.

SEC. 286. All acts and parts of acts conflicting herewith, as to crimes committed after this act shall go into effect, are hereby repealed. All laws heretofore existing upon the subject of crimes and punishments shall remain in full force and effect as to all crimes committed before this act goes into effect.

NOTE—The preceding 286 sections, except where otherwise specially noted, are from the act of Jauuary 12th, 1872, and took effect August 1st, 1872.

Standing reward by Governor.

SEC. 287. The governor shall offer a standing reward of three hundred dollars for the arrest of each person engaged in the robbery of, or in an attempt to rob, any person or persons upon, or having in charge, in whole or in part, any stage coach, wagon, railroad train, or other conveyance, engaged at the time in carrying passengers, or any private conveyance within this territory, the reward to be paid to the person or persons making the arrest, immediately upon the conviction of the person or persons so arrested, but no reward shall be paid except after such conviction.

NOTE—Act of February 16th, 1877.

FIFTH DIVISION.

GENERAL LAWS.

CHAPTER I.

ADOPTION, EMPLOYMENT AND PROTECTION OF CHILDREN.

Sec. 1. Minor child may be adopted.
Sec. 2. Age of person adopting.
Sec. 3. Husband or wife must consent.
Sec. 4. When consent of parent must be had.
Sec. 5. Consent of child over 12 years old.
Sec. 6. Agreement to be executed.
Sec. 7. Duty of probate judge.
Sec. 8. Nature of the relationship.
Sec. 9. Parental duties cease.
Sec. 10. Adoption of illegitimate child by its father.
Sec. 11. Punishment for cruelty to child.
Sec. 12. Punishment for employing child as acrobat, etc.
Sec. 13. Punishment for employing child to beg, sing, etc., on highways.
Sec. 14. Punishment for employing child in saloon, etc.
Sec. 15. Punishment for employing child in underground mine, etc.
Sec. 16. Oath and warrant in case of violation of this law.
Sec. 17. Disposition of child in such case.
Sec. 18. Agents of societies for protection of children may be appointed as police officers.
Sec. 19. Child may be committed to care of humane society.

Sec. 20. Child deserted by parents may be adopted.
Sec. 21. Child committed to care of county commissioners in certain cases.
Sec. 22. Punishment for taking female child for purposes of prostitution.
Sec. 23. Punishment for permitting child to enter saloon.
Sec. 24. Inconsistent acts repealed.

Adoption of minor.

SEC. 1. Any minor child may be adopted by any adult person in the cases and subject to the rules prescribed in this act.

Age of person adopting.

SEC. 2. The person adopting the child must be at least ten years older than the person adopted.

Consent of husband or wife

SEC. 3. A married man not lawfully separated from his wife cannot adopt a child without the consent of his wife, nor can a married woman, not thus separated from her husband without his consent: *Provided*, The husband or wife not consenting is capable of giving such consent.

Consent of parents.

SEC. 4. A legitimate child cannot be adopted without the consent of its parents, if living, nor an illegitimate child without the consent of its mother, if living, except that consent is not necessary from a father or mother deprived of civil rights or adjudged guilty of adultery, or of cruelty, or of desertion, and for either cause divorced, or adjudged to be an habitual drunkard, or who has been judicially deprived of the custody of the child on account of cruelty or neglect.

Consent of child.

SEC. 5. The consent of the child, if over the age of twelve years, is necessary to its adoption.

Agreement

SEC. 6. The person adopting a child, and the child adopted, and the other persons whose consent is necessary, must appear before the probate court of the county where the person adopting resides, and the necessary consent must thereupon be signed, and an agreement be executed by the person adopting, to the effect that the child shall be adopted and treated in all respects as his or her own lawful child should be treated.

Duty of probate judge.

SEC. 7. The probate judge shall examine all persons appearing before him pursuant to the last section, each separately, and if satisfied that the interests of the child will be promoted by the adoption, he shall make an order declaring that the child shall thenceforth be regarded and treated in all respects as the child of the person adopting.

Relationship.

SEC. 8. A child, when adopted, may take the family name of the person adopting. After adoption the two shall sustain toward each other the legal relation of parent and child, and have all the rights and be subject to all the duties of the relation.

Parental duties cease

SEC. 9. The parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and of all responsibility for the child so adopted, and have no right over it.

Adoption of illigitimate child by its father.

SEC. 10. The father of an illegitimate child, by publicly acknowledging it as his own,.receiving it as such with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this act do not apply to such an adoption.

NOTE.—Sections 1 to 10, both inclusive, are sections 1 to 10, both inclusive, and comprise all of "An Act providing for the adoption of children," approved March 4, 1887.

Cruelty to child punished

SEC., 11. That any person whatsoever, who shall cruelly ill treat, abuse or inflict unnecessary cruel punishment upon any infant or minor child; and any person having the care, custody, or control of any minor child, who shall wilfully abandon or neglect the same, shall be guilty of a misdemeanor, and upon conviction thereof, before any justice of the peace or court of record, shall be fined by such justice or court of record not less than ten dollars, nor more than fifty dollars for each offence.

Employing child as acrobat, etc., punished.

SEC. 12, Any person having the care, custody or control of any minor child, under the age of sixteen years, who shall in any manner sell, apprentice, give away or otherwise dispose of such child, and any person who shall take, receive or employ such child, for the vocation or occupation of rope or wire walking, or as an acrobat, gymnast or contortionist, and any person having the care, custody or control of any minor child whatsoever, shall sell, apprentice or give away, or otherwise dispose of such child, or who shall take, receive or employ such child for any obscene or indecent or illegal exhibition or vocation, or any vocation injurious to the health or dangerous to the life or limb of such child engaged therein, or for the purpose of prostitution, and any person who shall retain, harbor or employ any minor child in or about any assignation house or brothel, or in any place where any obscene, indecent or illegal exhibition takes place, shall be guilty of a misdemeanor, and upon conviction thereof before any justice of the peace or court of record, shall be fined not less than fifty dollars nor more than one hundred dollars for each offence.

Penalty for employing child as beggar

SEC. 13. Any person having the care, custody or control, lawful or unlawful, of any minor child under the age of eighteen years, who shall use such minor or apprentice, give away, let out, hire, or otherwise dispose of such minor, to any person, for the purpose of singing, playing on musical instruments, begging, or for any mendicant business whatsoever, in the streets, roads or other highways of this territory, and whosoever shall take, receive, hire or employ, use or have in custody, any such minor, for the vocation, occupation, calling, service or purpose of singing, playing upon musical instruments, or begging upon the streets, roads or other highways of the territory, or for any mendicant business whatsoever, shall be guilty of a misdemeanor, and upon conviction thereof, in the manner provided in the 11th section of this act, shall be fined not less than fifty dollars nor more than one hundred dollars.

Penalty for employing child in saloon, etc.

SEC. 14. Any person having the care, custody or control of any minor child, under the age of sixteen years, who shall in any manner sell, apprentice or give away, or permit such child to sing, dance, act, or any manner exhibit in any dance-house whatever, or in any concert saloon, theater or place of entertainment, where wines or spirituous or malt liquors are sold or given away, or with which any place for the sale of wines or spirituous or malt liquors, is directly or indirectly connected by any passageway or entrance, and any proprietor of any dance house whatever, or any such concert saloon, theater or place of entertainment, so employing any such child, shall be guilty of a misdemeanor and upon conviction thereof, in the manner provided in the 11th section of this act, shall be fined not less than fifty dollars nor more than one hundred dollars for each offence.

Penalty for employing child underground

SEC. 15. Any person who shall take, receive, hire or employ any child under thirteen years of age, in any underground works or mine, or like place whatsoever, shall be guilty of a misdemeanor, and, upon conviction thereof, in the manner provided in the 11th section of this act, shall be fined not less than ten dollars, nor more than fifty dollars.

Affidavit and warrant

SEC. 16. Whenever any person shall, before a justice of the peace, make oath or affirmation that the affiant believes that this act has been, or is being violated in any place, stating the facts, such justice shall forthwith issue a warrant to a constable or other authorized officer, to enter such place or house, and investigate the same, such person may arrest or cause to be arrested, all offenders, and bring them before any justice or court of record for a hearing of the case, and it shall be the duty of all constables and policemen to aid in bringing all such offenders before said authorities for a hearing.

Guardian may be appointed.

SEC. 17. Whenever any person, having the custody or control of any minor child, shall be convicted of a violation of any of the provisions of this act, it shall be lawful for any person to apply to the probate court of the county wherein the offence has been committed, for the appointment of a proper guardian for the person of such minor, and the said court may, in its discretion, make any such appointment, having due regard, in the selection of a guardian, to the religious persuasion of the parent or the former guardian; or it may place such child in an asylum or home for children, with the powers of a guardian of the person, as may be most expedient: *Provided, however*, that said court may order the parent to pay such reasonable sum towards the maintenance of such child, and at such time, and in such amounts, as the court may see fit; and such courts may, at any subsequent time, upon being satisfied that the parent or guardian has become a fit person to resume the custody of said minor, and upon reasonable security to be filed with the court, being given for the faithful observance of the provisions of this act, remand such minor to the custody of such parent or guardian, subject, nevertheless, to the obligation of any indebtedness or legal engagements already entered into, on behalf of said minor, by his or her guardian.

Agents of certain societies may be appointed police officers.

SEC. 18. Any duly organized or incorporated society, having for one of its objects the protection of children from cruelty, may offer any agents or officers employed by them, to the mayor of the city, for the purpose of being commissioned to act as police officers through the limits of said city, for the purpose of arresting all the offenders against this act, or any of the provisions thereof, whereupon the mayor in such city, shall, if such persons are proper and discreet persons, commission them to act as such police officers, with all the rights and powers appertaining thereto, but no such city shall be liable in any way for the salary or wages of such officers, or for any expense whatsoever in relation thereto, except for the detention of prisoners; and in any district or township not incorporated, such humane society may offer similarly qualified persons to the probate court of the county, whereupon such court, or any judge thereof, shall, if they be fit persons, commission such persons to act as constables, with power to arrest all offenders against this act, or any provisions thereof; but no county shall be in any way liable for the salary or wages of any such officer, or for any expense in relation thereto, except for the detention of prisoners. All persons thus qualified under this section, shall be deemed to be constables and authorized officers within the meaning of section six of this act; and the keepers of jails or lock-ups, or station houses, in any of said counties, are required to receive all persons arrested by such policemen or constables.

Custody of child given to humane society.

SEC. 19. Whenever any person, having the custody or control of any minor child, shall be convicted of an assault and battery upon such child, or of any violations of the provisions of this act, it shall be lawful for the justice of the peace or court before whom such conviction has taken place, or when the parents or proper guardian of any child cannot be found, it shall be lawful for any court to commit such child to the care and custody of any duly authorized or incorporated humane society, having for one of its objects the protection of children from cruelty; and such society shall thereupon have all the rights of a guardian of the person of such child; but such society may at any time apply to the probate court of the proper county for the appointment of a guardian of the person, or the commitment of such child to any asylum or home for children, as provided in the seventeenth section of this act.

Adoption of child

SEC. 20. Whenever it shall be made to appear to the satisfaction of the probate court of any county, that any minor child has been deserted by its parents or surviving parent, and that it has no legal guardian, it shall be lawful for any person desirous of adopting the said child, to adopt the same, according to law.

Child may be committed to commissioners.

SEC. 21. Whenever the parents or proper guardians of any infant, unable to support itself, have been convicted of any of the offences enumerated in this act, or are dead, or cannot be found, and there is no other person legally responsible for the maintenance and support of such child, willing to assume such support or to be found within the county, any justice of the peace, probate or district court of the county in which such child may be found, may commit such child to the care and custody of the commissioners of said county; but nothing herein contained, shall exempt any person from the duty of maintaining and supporting such child, as now imposed by law.

Penalty for leading female child to prostitution.

Sec. 22. Whenever any person takes a female child under the age of fifteen years for the purpose of prostitution or sexual intercourse, or who inveigles or entices away such female child into a house of ill-fame, or of assignation, or elsewhere, for the purpose of prostitution or sexual intercourse, such person shall in every such case, be guilty of a felony, and, upon conviction thereof, shall be sentenced to imprisonment at hard labor, for not more than fifteen years, or to pay a fine not exceeding one thousand dollars, or both, at the discretion of the court.

Penalty for permitting child in saloon, etc.

Sec. 23. Any proprietor, or any person in charge of any dance-house, concert saloon, theatre, museum, or similar place of amusement, where wines, or spirituous or malt liquors are sold or given away, or any place of entertainment injurious to health or morals, who admits or permits to remain therein, any minor, under the age of eighteen years, unless accompanied by his or her parent or guardian, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars, and shall be disqualified from holding a license for conducting said business for the term of one year thereafter.

Repealing section

Sec. 24. All acts and parts of acts inconsistent herewith, are hereby repealed.

Note.—Sections 11 to 24 both inclusive, are sections 1 to 14, both inclusive, and comprise all of "An act relating to the protection, employment, and adoption of children," approved March 7th, 1887.

CHAPTER II.

ANIMALS.

[*See Game.*]

Sec. 25. Licenses to sell stock at auction.
Sec. 26. Names of persons offering stock for sale to be recorded.
Sec. 27. Auctioneer entitled to charge for recording.
Sec. 28. Violations to be punished.
Sec. 29. Blooded stock exempt from taxation one year.
Sec. 30. Certificate of pedigree.
Sec. 31. Cattle or sheep driven through any county of this territory to be plainly marked or branded.

Stock register

SEC. 25. Any person who may be licensed in this territory to keep an auction where horses, mules, asses, jennies and cattle, are sold at auction, shall open a book called a stock register, in which he shall describe minutely every animal he shall offer for sale, and before proceeding to sell the same.

Contents of register

SEC. 26. In such register shall be recorded the person's name who brings forward such animal for sale, and whether or not he is the owner of the same, and if not the owner, the name of the owner, with his residence; also the color, brand or mark, size and age, as near as may, be of the animal so offered for sale.

Fee: register to be kept open.

SEC. 27. The keeper of such auction shall be entitled to charge and receive for the registering each animal so entered in his register, before he shall offer the same for sale, the sum of twenty-five cents; and all stock registers shall be open for inspection and reference to any person who may wish to examine the same, and shall be evidence in any court where the trial of the rights of property may be had.

Penalty.

SEC. 28. Any person who shall offer for sale at auction any animal named in section 25 of this chapter, without first having complied with the requirements of this chapter shall, upon conviction thereof, before any court of proper jurisdiction, be fined in the sum of fifty dollars, to be collected as other fines, and paid into the county treasury for the use of the county.

Certain property exempt from taxation

SEC. 29. That all thorough-bred stallions and jacks, and all horned cattle with pedigree recorded in American or English herd books, and all imported sheep and swine, shall be exempt from assessment and taxation for one year after their arrival in this territory; but it shall be the duty of the assessor to assess all such property at its cash value, but in the list and assessment rolls he shall write the word "exempt," opposite the entry of all such property.

Pedigree.

SEC. 30. The owner or owners of such stallions, jacks, horned cattle, sheep or swine, shall be required to produce to the assessor of the county in which such stock is kept, a certified copy of pedigree or record of herd book or books, as aforesaid.

12th ses p 59.

Cattle and sheep driven must be branded or marked.

SEC. 31. All droves of cattle or sheep which may hereafter be driven into or through any county of this territory shall be plainly branded or marked with one uniform brand or mark; the cattle shall be so branded with the distinguishing ranch or road brand of the owner as to show distinctly, in such place or places as the owner may adopt; sheep shall be marked distinctly with such mark or device as may be sufficient to distinguish the same readily, should they become intermixed with other flocks of sheep owned in the territory. Any such owner or owners, or persons in charge of such drove which may be driven into or through the territory, who shall fail to comply with the provisions of this section shall be fined not les than fifty nor more than three hundred dollars.

NOTE.---Section 31, act of February 22d, 1881.

CHAPTER III.

ANIMALS—PREVENTION OF SPREAD OF DISEASE AMONG CATTLE.

Sec. 32. Governor to nominate stock commissioners.
Sec. 33. Commissioners must be owners of stock.
Sec. 34. Governor to notify the commissioners of appointment.
Sec. 35. Board of commissioners to elect a president and appoint a secretary.
Sec. 36. Commissioners and secretary to receive no compensation for their services.
Sec. 37. Duties of stock commissioners.
Sec. 38. Board of commissioners may appoint stock inspectors and detectives.
Sec. 39. Stock inspectors to give bonds.
Sec. 40. Duties of stock inspectors.
Sec. 41. Inspectors and detectives to be under control of the commissioners.
Sec. 42. County commissioners to levy a tax annually.
Sec. 43. Levy of tax for 1887.
Sec. 44. Persons exempt from the tax.
Sec. 45. Board of stock commissioners to audit bills, etc.
Sec. 46. Division of the territory into districts.
Sec. 47. Governor to appoint a veterinary surgeon.
Sec. 48. Duties of veterinary surgeon.
Sec. 49. Veterinary surgeon may quarantine cattle.
Sec. 50. Veterinary surgeon may order killing of cattle.
Sec. 51. Method of appraisal of cattle killed.
Sec. 52. Veterinary surgeon to report annually to governor.

Sec. 53. Governor may prohibit importation of cattle from infected sections.
Sec. 54. Owners of diseased cattle to report.
Sec. 55. Regulations to be observed concerning diseased cattle.
Sec. 56. How claims for cattle killed may be adjusted.
Sec. 57. Compensation of veterinary surgeon, inspectors, etc.
Sec. 58. Liability of territory for stock killed limited.
Sec. 59. County commissioners to levy tax annually.
Sec. 60. Veterinary surgeon to select places where stock shall be quarantined.
Sec. 61. Proceeds of fines—how disposed of.
Sec. 62. Veterinary surgeons may appoint deputies.
Sec. 63. Duty of prosecuting attorney and court.

Appointment and oath of stock commissioners.

SEC. 32. That the governor of the territory is hereby authorized to nominate, and by and with the consent of the council appoint a board of stock commissioners, consisting of one member for each of the counties of Dawson, Custer, Yellowstone, Meagher, Chôteau, Fergus and Lewis and Clarke, and such other counties as hereafter may require by action of the county commissioners of such county, the appointment of a member of the board of stock commissioners therein, and such stock commissioners upon entering upon their duties shall take an oath to support and uphold the constitution of the United States and the laws of the territory, and to well and truly perform their duties as provided by law, which oath shall be filed in the office of the secretary of the territory, and all such counties not hereinbefore named shall be and constitute the third district.

NOTE—See note to section 46

14th ses. p. 92.

Qualifications of commissioner

SEC. 33. Each member of said board so appointed shall be the owner of cattle or horses in the county for which he is appointed, and shall be a resident of the county for which he is appointed. Said stock commissioners shall hold office for two years, or until their successors are appointed and qualified, and in case of vacancy from death, resignation or removal from the territory, the governor shall appoint to fill said vacancy.

14th ses p 92.

Commission.

SEC. 34. The governor shall notify the persons so appointed, and when they have signified their acceptance of said appointment, shall issue to each a commission as a member of the board of stock commissioners, and shall fix a time and place for the first meeting of said board.

14th ses p. 92.

Organization of board.

SEC. 35. Said board shall, at their first meeting, in pursuance to the governor's call, organize by electing one of their number president of said board, and shall appoint a secretary who shall reside at the capital of the territory.

No compensation.

SEC. 36. Said stock commissioners and their secretary shall receive no compensation or mileage for their services, but shall be allowed their actual expenses incurred by them in the performance of their duties.

NOTE—See note to section 46

Duty of commissioners

SEC. 37. It shall be the duty of said board of stock commissioners to exercise a general supervision over, and, so far as may be, protect the stock interests of the territory from theft and disease, and shall devise and recommend from time to time such legislation as in their judgment will foster this industry. Said board of stock commissioners may take all necessary and lawful steps, procure all necessary and lawful process for the attendance of witnesses, and employ any counsel that they may deem proper to assist in the prosecution of any person arrested as hereinafter provided, and it shall be the duty of said board, whenever they may deem it necessary to assist in the prosecution and conviction of any and all persons guilty of any of the crimes and misdemeanors against the laws of this territory in feloniously branding or stealing any stock, or any other crime, or misdemeanor, under any of the laws of the territory for the protection of the rights and interests of stock owners, and they shall have full power and authority to make rules and regulations governing the recording of live stock brands.

NOTE—See note to section 46

Inspectors and detectives

SEC. 38. The said board of stock commissioners are hereby authorized, and it is made their duty, to appoint such stock inspectors and detectives as they may deem necessary for the better protection of the live stock interests of the territory, and such inspectors and detectives shall have the power to summon a posse when necessary to make an arrest in the same manner and by the authority as sheriffs. Such stock inspectors and detectives may, when deputized, exercise the powers of deputy sheriff, but shall not receive any fee or emolument therefor from the territory or any county.

SEC. 39. Said stock inspectors and detectives shall each make and execute a bond, with two sufficient sureties, in the sum of one thousand dollars ($1.000) to the Territory of Montana, conditioned for the full and faithful discharge of their duties, said bond to be approved by and filed with the secretary of the territory, and each shall take and subscribe an oath to support and uphold the constitution of the United States and the laws of the territory, to faithfully and impartially perform the duties of their office, which oath shall be filed with said secretary of the territory.

Bond of inspectors

NOTE.—See note to section 46

SEC. 40. Said stock inspectors and detectives are hereby empowered, and it shall be their duty, to arrest all persons who shall violate the stock laws of this territory which shall come under their observation, and shall, upon information that any person or persons have committed any crime or misdemeanor against the laws of this territory, in feloniously branding or stealing any stock, or any other crime or misdemeanor under any of the laws of this territory for the protection of the rights and interests of stock owners, make the necessary affidavit for the arrest and examination of such person or persons, and shall, upon warrant issued therefor, by any officer authorized to issue the same, immediately arrest such person or persons, and bring them before the officer issuing said warrant, or any other officer authorized to act in case of his absence or inability to act, to be dealt with according to law, and shall make due return of said warrant, and notify said board of stock commissioners of his acts and doings in that behalf.

14th ses. p. 93.

Powers and duties of inspectors and detectives

SEC. 41. Said stock inspectors and detectives shall be under the exclusive direction and control of said board of stock commissioners, and shall be paid for their services such sums as may be agreed upon by the board, out of the fund hereinafter provided for, but in no case shall they receive any mileage.

Under control of commissioners

SEC. 42. It shall be the duty of the board of county commissioners of each county in this territory, named in section 32 at the time of levying the annual tax, to levy such tax as shall be recommended by said board of stock commissioners, not exceeding one and one-half mills on the dollar upon the assessed valuation of all cattle, horses, mules, and asses, in their respective counties, which shall be collected as other taxes upon like property, and, when so collected, paid into the hands of the territorial treasurer, who shall keep the same as a

Levy of tax.

separate fund, to be known as the "Stock Inspector and Detective Fund," and which said fund shall be used in defraying the expenses incurred under the provisions of this act, and for such other purposes as in the judgment of said stock commissioners shall best subserve the stock interests of the territory. The expenditures in any year under the provisions of this act shall in no case exceed the special tax levied for that year.

Levy of tax for 1887.

SEC. 43. It shall be the duty of the county commissioners of each of the counties in the territory named in section 32 of this act, and in such other counties as require, pursuant to section 32 of this act, the appointment of a stock commissioner therein at their next regular meeting after the passage of this act, to levy the special tax for the year 1887 of one and one-half (1½) mills on the dollar, as hereinbefore provided, which shall be collected and paid into the territorial treasury in the same manner as other territorial taxes. *Provided*, That if any of the counties shall have heretofore made such levy at a less rate the same shall be increased to 1½ mills as herein provided. *Provided further*, That the county commissioners of any county not mentioned in section 32 of this act shall, at their next regular meeting after the appointment of a stock commissioner for said county, proceed to make said levy of one and one-half mills on the dollar, as hereinbefore provided.

NOTE.---See note to section 46

Exemption.

SEC. 44. When any person is the owner of not exceeding ten cows and two horses, or two mules, such animals shall be exempt from taxation under the provisions of this act.

Payment of bills.

SEC. 45. It shall be the duty of said board of stock commissioners to audit all bills for expenses incurred under the provisions of this act, and, if found correct and justly due, shall certify the same to the territorial auditor, who shall issue a warrant on the territorial treasurer in favor of the party or parties entitled thereto, for the amounts so certified, which shall be paid whenever and as soon as any funds shall come into his hands properly applicable thereto. Said warrant or warrants shall specify that they were drawn on the stock inspector and detective fund, and when presented for payment if not paid for want of funds therefor, said treasurer shall endorse thereon the date of presentment, and that the same is not paid for want of funds, and said warrants shall thereafter bear the same rate of interest as territorial warrants, and be likewise paid out of said fund, and shall not be chargable to or collected out of any other funds in the territorial treasury.

Districts.

SEC. 46. For the purposes of this act this territory shall be divided into two districts; and the counties of Dawson, Custer and Yellowstone shall compose the first district, including also any counties that may be formed out of portions of said counties; and the counties of Meagher, Choteau and Lewis and Clarke shall compose the second district, including also any counties that may be formed out of portions of said counties; and the stock inspectors and detectives are hereby made district officers, and said board of stock commissioners shall, in all cases designate the district in which said inspectors and detectives shall serve, which shall be designated in their commissions.

NOTE —Sections 33, 34, 35, 40, 41, 42, 44, 45 and 46 are from Act of March 12, 1885 Sections 32, 36, 37, 38, 39 and 43 comprise all of "An act to amend sections 1, 5, 6, 7, 8 and 12 of an act entitled 'An Act for the better protection of the live stock interests of the territory,' approved March 12, 1885,'" approved March 9, 1887, save and except the introductory clause of said act of March 9, 1887, which is in the words and figures following, to-wit. "Section 1 That sections 1, 5, 6, 7, 8 and 12 of an act entitled, 'An Act for the better protection of the live stock interests of the territory,' approved March 12, 1885, be and the same are hereby amended to read as follows "

14th ses p. 31.

Appointment of territorial veterinary surgeon.

SEC. 47. The governor of the territory is hereby authorized to nominate, and by and with the advice and consent of the council, appoint a competent veterinary surgeon, who shall be known as the "Territorial Veterinary Surgeon," and, on entering on his duties, shall take an oath to well and truly perform his duties, as provided by law.

Duties of territorial surgeon.

SEC 48. The duties of said territorial veterinary surgeon shall be as follows:

First. To investigate any and all cases of contagious or infectious diseases among cattle, horses, mules, and asses, in this territory, of which he may have a knowledge, or which may be brought to his notice by any resident in the locality where such disease exists; and it shall be his duty, in the absence of specific information, to make visits of inspection to any locality where he may have reason to suspect that there is contagious or infectious diseases.

Second. To inspect, under the regulations of this chapter, all cattle, horses, mules, and asses, which may be brought into this territory, in any manner whatever, from or through such state, territory, or foreign country, as the governor shall declare by proclamation upon the recommendation of the board of stock commissioners, or otherwise be held in quarantine for purposes of inspection for contagious or infectious diseases. And after the making of such proclamation it shall be the duty of the owner or person in charge of any cattle, horses, mules, or asses, arriving in this territory, from or through any state, territory, or foreign country, against which quarantine has been declared, to notify the territorial veterinary surgeon without delay, and not to allow such animals, or any of them, to leave the place of arrival until they shall have been examined by the said surgeon, and his certificate obtained that all are free from disease; and no animal pronounced unsound from disease by the territorial veterinary surgeon shall be turned loose, or allowed to run at large, or removed or permitted to escape, but shall be held subject to the order of the territorial veterinary surgeon. Any person failing to comply with this provision shall be deemed guilty of a misdemeanor; and, upon conviction, shall be fined not less than fifty nor more than five hundred dollars for each offence, and shall be liable for any damage and loss that may be sustained by any person or persons by reason of the failure of such owner or agent to comply with the provisions of this section: *Provided*, that the owner of horses, mules, or asses, ridden under the saddle or driven in harness into this territory, or the owner of oxen driven into this territory under the yoke, and any person coming into this territory with his own team or teams, shall not be required to notify the territorial veterinary surgeon, or await the inspection of such work-oxen, team, or teams, but he shall be liable for all loss or damage to any person or persons from or by reason of any contagious or infectious disease brought into the territory by his animals; and no cattle, horses, mules, or asses shall be held in quarantine in this territory for a longer period than ninety (90) days, unless contagious or infectious disease shall be found to exist among them.

14th ses p 32. Quarantine.

SEC. 49. In all cases of contagious or infectious disease among domestic animals or Texas cattle in this territory, the territorial veterinary surgeon shall have authority to order the quarantine of the infected premises, and in case such disease shall become epidemic in any locality in this territory, the territorial veterinary surgeon shall immediately notify the governor of the territory, who shall thereupon issue his proclamation forbidding any animal of the kind among which said epidemic exists to be transferred from said locality without a certificate from the territorial veterinary surgeon showing such animal to be healthy. The expenses of holding, feeding, and taking care of all animals quarantined under the provisions of this act, shall be paid by the owner, agent, or person in charge of said stock.

Slaughter of diseased animals.

SEC. 50. In case of any epidemic disease where premises have been previously quarantined by the territorial veterinary surgeon as before provided, he is further authorized and empowerd, when in his judgment necessary, to order the slaughter of any or all diseased animals upon said premises, and of all animals that have been exposed to contagion or infection, under the following restrictions: Said order shall be a written one, and shall be made in duplicate, and there shall be a distinct order and duplicate for each owner of the animals condemned, the original of each order to be filed by the territorial veterinary surgeon with the secretary of the territory, and the duplicate given to said owner. And, further, before slaughtering any animal or animals, that have been exposed only, and do not show disease, the territorial veterinary surgeon shall call in consultation with him two respectable practicing veterinarians or physicians, residents of the territory, or, if this is impossible, then two reputable and well known stock owners, residents of the territory, and shall have written endorsements upon his order of at least one of said consulting physicians or stock owners, stating that said action is necessary, before such animal or animals shall be slaughtered.

Slaughtered animals to be appraised and destroyed

SEC. 51. That sections five, six, ten, eleven, fifteen, eighteen and nineteen, of an act entitled "An act to suppress and prevent the dissemination of contagious and infectious diseases among domestic animals and Texas cattle" be so amended to read as follows, viz: Section 5. Whenever as herein provided, the territorial veterinary surgeon shall order the slaughter of one or more animals he shall at the time of making such order notify in writing the nearest available justice of the peace, who shall thereupon summon three disinterested citizens, who shall be stock owners in the neighborhood to act as appraisers of the value of such animals. Such appraisers, before entering upon the discharge of their duties, shall be sworn to make a true and faithful appraisement without prejudice or favor. They shall after making their appraisement return certified copies of their valuation, a separate one being made for each owner, together with an accurate description of each animal slaughtered (giving all brands, ear marks, wattles, age, sex and class, as to whether American, half breed or Texas) to the justice of the peace by whom they were summoned, who shall after entering the same upon his record and making an endorsement upon each showing it to have been properly recorded, return it together with the duplicate order of the territorial veterinary surgeon, to the person or persons owning the animals slaughtered; and it shall be the duty of the territorial veterinary surgeon to superintend the slaughter of such animals as may be condemned and also the destruction of the carcass which latter shall be by burning to ashes, or burying in the earth to a depth of not less than six feet, and shall include every part of the animal and hide, and also excrement as far as possible. In case the owner of any animal found diseased by the territorial veterinary surgeon shall kill the same or consent to its being killed by the veterinary surgeon without appraisement then the veterinary surgeon shall cause the same to be burnt or buried as cheaply as practicable as in cases of appraisement.

NOTE ---See note to section 64.

Reports of surgeon and commissioners

SEC. 52. Amend section 6, so that it will read as *follows:*

Section 6. The territorial veterinary surgeon shall make a report at the end of every year to the territorial board of stock commissioners of all matters connected with his work and they shall make the same a part of their annual report to the governor, and they shall also transmit to the several board of commissioners such parts of said report as they may deem to be of general interest to the breeders of live stock. They shall also give information in writing as soon as they obtain it to the governor and to the various board of county commissioners of each cause or suspicion of fresh eruption of disease. in each locality, the cause, if known, and the measure adopted to check it.

NOTE.—See note to section 64.

Quarantine proclamation by governor

SEC. 53. Whenever the governor of the territory shall have good reason to believe that any disease covered by this chapter has become epidemic in certain localities in another state or territory, or that conditions exist which render domestic animals and Texas cattle liable to convey disease, he shall thereupon, by proclamation, schedule such localities, and prohibit the importation from them of any live stock of the kind diseased into this territory, except under such restrictions as he, after consultation with the territorial veterinary surgeon, may deem proper. Any corporation or any person or persons who, after the publication of such proclamation, shall knowingly receive in charge any such animal or animals from any one of said prohibited districts, and transport or convey the same within the limits of this territory, shall be deemed guilty of a misdemeanor, and, upon conviction, be fined not less than one thousand dollars and not more than ten thousand dollars for each and every offence, and shall further become liable for any and all damages and loss that may be sustained by any person or persons by reason of the importation or transportation of such prohibited animals.

Diseased cattle to be repoited

SEC. 54. It shall be the duty of any person or persons who shall have or suspect that there is upon his or their premises, or upon the public domain, any case of contagious or infectious disease among horses, mules, cattle or asses, to immediately report the same to the territorial veterinary surgeon, and a failure so to do, or any attempt to conceal the existence of such disease, or to wilfully or maliciously obstruct or resist the said territorial veterinary surgeon in the discharge of his duty as hereinbefore set forth, shall be deemed a misdemeanor, and any person or persons who shall be convicted of any one of the above acts or omissions shall be fined not less than fifty dollars nor more than five hundred dollars for each and every such offence and shall forfeit all claims to indemnity for loss from the territory, and upon conviction a second time, shall, in addition to the above named fine, be imprisoned in the county jail for a term not less than thirty days nor more than six months.

Regulations.

SEC. 55. The following regulations shall be observed in all cases of disease covered by this chapter.

First. It shall be unlawful to sell, give away, or in in any manner part with, any animal affected with, or suspected of being affected with, contagious or infectious disease; and in case of any animal that may be known to have been affected with or exposed to any such disease, within one year prior to such disposal, due notice of the fact shall be given in writing to the party receiving the animal.

Second. It shall be unlawful to kill for butcher purposes any such animal, to sell, give away, or use any part of it, or its milk, or to remove any part of the skin. A failure to observe these provisions shall be deemed a misdemeanor; and, on conviction, shall be punished by a fine not less than one hundred dollars, nor exceeding five hundred dollars. It shall be the duty of the owner or persons having in charge any animal affected with, or suspected of being affected with, any contagious or infectious disease, to immediately confine the same in a safe place, isolated from other animals, and with all necessary restrictions to prevent dissemination of the disease, until the arrival of the territorial veterinary surgeon. The above regulations shall apply as well to animals in transit through the territory as to those resident therein; and the territorial veterinary surgeon, or his duly authorized agent, shall have full authority to examine, whether in car or yards or pastures or stables, or upon the public domain, all animals passing through the territory or any part of it, and on detection or suspicion of disease, to take possession of and treat and dispose of said animals in the said manner as is prescribed for animals resident in the territory.

14th ses, p. 35

Adjustment of claims for slaughtered cattle.

SEC. 56. Amend section 10 so that it will read as follows:

SEC. 10. All claims against the territory arising from the slaughter of animals, under the provisions of this act, shall, together with the order of the territorial veterinary surgeon, and the valuation of the appraisers in each case, be submitted to the territorial auditor, who shall examine them without unnecessary delay, and for each one that he finds to be equitable and entitled to indemnity under this act, shall issue his warrant on the stock indemnity fund in the hands of the territorial treasury for the sum named in the appraiser's report to the stock commissioners thereto. In auditing any claim under this act, it shall be the duty of the auditor to satisfy himself that it does not come under any class for which indemnity is refused by this act, and he shall require the affidavit of the claimant to this fact, or if the claimant be not cognizant thereof, then of some reputable person who is cognizant thereof; and also the certificate of the territorial veterinary surgeon, whose duty it shall be to inform himself fully of the fact, that in his opinion the claim is legal and just, and the auditor may, at his discretion, require further proof.

The indemnity to be granted shall be two-thirds of the value of the animal, as determined by the appraisers, with reference to its diminished value, because of its being diseased, or having been exposed to disease. It shall be paid to the owner upon his application and the presentation of the proofs prescribed herein, and it shall be the duty of said owner to make such application within six months after the slaughter of the animal for which payment is claimed, failing which such claim shall be barred by limitation. These payments shall be made by the territorial treasurer as already provided, and from the fund provided by this act. The right to indemnity under this act is limited to animals destroyed by reason of the existence of some epizootic disease generally fatal and incurable, such as rinderpest, hoof and mouth disease, plureopneumonia, authrex, or Texas fever, among bovines, and glanders among horses, mules, and asses. For the ordinary contagious diseases, not in their nature fatal, such as epizootic, influenzas in horses, no indemnity shall be paid. The right to indemnity shall not exist, and payment of such shall not be made, in the the following cases:

First. For animals belonging to the United States.

Second. For animals that are brought into the territory contrary to the provisions of this act.

Third. For animals that are found to be diseased, or that are destroyed because they have been exposed to disease before or at the time of their arrival in the territory.

Fourth. When an animal was previously affected by any other disease, which, from its nature and development, was incurable and necessarily fatal.

Fifth. When an owner, or person in charge, shall have knowingly, or negligently, omitted to comply with the provisions of sections eight and nine of this act.

Sixth. When an owner or claimant, at the time of coming into possession of the animal, knew it to be diseased, or received the notice specified in the first clause of section 55 of this act.

Seventh. When the animal, or animals, have been brought into the territory within ninety days immediately preceding the outbreak of disease among or upon them.

NOTE.—See note to section 64.

Salary and qualifications of territorial veterinary surgeon

SEC. 57. Amend section 11 as follows: Section 11. The territorial veterinary surgeon shall receive for his services the sum of three thousand dollars per annum together with his actual and necessary traveling expenses when in the performance of his duty and the actual cost of office rent and stationery, the so payments shall be made from the funds in the territorial treasury upon vouchers signed and sworn to by him

Fees of appraisers and consulting officers.

and submitted to the territorial auditor, who shall draw warrants upon the territorial treasurer, for the amounts found correct; separate vouchers being made for salary and expenses. No person shall be competent under this act to receive the appointment of territorial veterinary surgeon who is not at the date of his appointment a graduate in good standing of a recognized college of veterinary surgeons either in the United States, Canada or Europe. He shall hold his office for two years; he may be removed for cause by the governor, who shall also have power to fill the vacancy as hereinbefore provided. The appraisers herein provided for shall each receive three dollars for each day or part of a day they may be actually employed as such, which shall be paid from the territorial treasury out of the stock indemnity fund hereinafter provided, upon vouchers which bear the certificate of the justice who summoned them. The justice shall receive his ordinary fee for issuing a summons, to be paid out of the county fund. The members of the board of health, veterinarians, physicians, or stock owners, called in consultation by the territorial veterinary surgeon shall each receive three dollars for each day or part of a day, they may be actually so employed and ten (10) cents per mile, mileage for distances actually traveled, which sums shall be paid from the territorial treasury out of the stock indemnity fund hereinafter provided for upon vouchers certified to by the territorial veterinary surgeon and other incidental expenses connected with his work and made his duty by this act, such as causing animals to be slaughtered and their carcasses to be burned and disinfecting infected premises shall be paid from the territorial treasury out of the stock indemnity fund hereinafter provided for, upon vouchers certified to by him. Before entering upon the discharge of his duties he shall give good and sufficient surety in the sum of five thousand dollars for the proper management of the same. No constructive mileage shall be paid under this act, nor shall the territorial veterinary surgeon receive any mileage.

NOTE —See note to section 64.

Liability of territory.

SEC. 58. The liability of the territory for indemnity for animals destroyed, and for fees, costs, and expenses incurred under the provisions of this chapter in any year, is limited by, and shall in no case exceed, the amount especially designated for that purpose and for that period, by the terms of this chapter; nor shall the veterinary surgeon or any one else incur any liability on the part of the territory, under the provisions of this chapter, in excess of the surplus in the stock indemnity fund hereinafter provided; nor shall any act be performed or property taken, under the provisions of this chapter, that will become a charge against the Territory of Montana further than to the extent provided by said stock indemnity fund.

Tax levy.

SEC. 59. Hereafter it shall be the duty each year of the county commissioners of all the counties of the territory, at the time of making the annual assessment, to levy a special tax not exceeding one-half of one mill on the dollar upon the assessed value of all cattle, horses, mules, and asses in the territory, to be known as the "stock indemnity fund;" said tax shall be levied and collected by the several counties, and paid to the territorial treasurer in the manner provided by law for the levying, collection, and payment of other territorial taxes; said fund shall constitute the indemnity fund specified by this act to be used in paying for animals destroyed, and for fees, costs, and expenses provided under the provisions therefor. It shall be used exclusively for that purpose, and shall be paid out by the territorial treasurer as herein provided for; *Provided*, That where any person owns not exceeding five hundred dollars in value of horses, cattle, or mules, the same shall be exempt from taxation under the provisions of this chapter.

Place of Quarantine.

SEC. 60. The territorial veterinary surgeon shall select the place or places where stock shall be quarantined.

SEC. 61. Amend section 15 so as to read as follows:

Fines.

Section 15. All fines collected under the provisions of this act shall be paid into the stock indemnity fund of the territory.

NOTE.—See note to section 64

SEC. 62. Amend section 18 so that it will read as follows:

Appointment of deputy surgeons.

Section 18. The territorial veterinary surgeon shall have the power to appoint from time to time deputies, not exceeding four in number, at any time he cannot personally attend to all the duties required by his office, at a salary not to exceed five dollars per day for each day actually employed, to be paid out of said stock indemnity funds, and shall designate the county or counties for which each deputy is to act. All acts performed by such deputies shall have the same effect as if done by the territorial veterinary surgeon.

NOTE.—See note to section 64

SEC. 63. Amend section 19 so that it will read as follows:

Duty of prosecuting attorney and court

Section 19. It is hereby made the duty of the attorney general or county attorney of the respective counties to prosecute any case complained of and certified by the territorial veterinary surgeon for prosecution in any justice or district court within the jurisdiction of which any violation of this act may have been had, and, upon conviction of violating any of the provisions of this act, the court may award in addition to the penalties prescribed by law and add to the judgment such attorney's fees and costs of prosecution as the court may determine just in the premises.

NOTE—See note to section 64.

SEC. 64. And be it further enacted, that said act be further amended by adding thereto section 20 as follows:

Effect from passage.

Section 20. This act to take effect and be in force from and after its passage.

NOTE.—Sections 47, 48, 49, 50, 53, 54, 55, 58, 59 and 60 are from act of March 10, 1885 Sections 51, 52, 56, 57, 61, 62, 63 and 64 in order as here enumerated comprise all of "An Act to amend sections 5, 6, 10, 11, 15, 18 and 19 of an act entitled 'An Act to suppress and prevent the dissemination of contagious and infectious diseases among domestic animals and Texas cattle,' approved March 10, 1885, and to add section 20 thereto," approved March 9, 1887.

CHAPTER IV.

ANIMALS—PREVENTION OF SPREAD OF DISEASE AMONG SHEEP.

Sec. 65. Duty of territorial veterinary surgeon.
Sec. 66. Tax for sheep inspector and indemnity fund
Sec. 67. Quarantine.
Sec. 68. Inspection and certificate.
Sec. 69. Sheep under quarantine not to be moved without written consent of other sheep owners.
Sec. 70. Importation from infected districts prohibited.
Sec. 71. Owner to report diseased sheep.
Sec. 72. Surgeon to make annual report.
Sec. 73. Surgeon may employ assistants.
Sec. 74. Certain laws repealed.
Sec. 75. Takes effect June 1, 1887.

Duty of territorial veterinary surgeon to inspect quarantined sheep.

SEC. 65. It shall be the duty of the territorial veterinary surgeon, or his deputy, to inspect all sheep which may be brought into this territory, in any manner whatever, from such states as the governor shall declare by proclamation, upon the recommendation of the president or secretary, and not less than two members of the executive committee of any of the territorial, district, or county wool-growers association, or otherwise, which may be held in quarantine for the purpose of inspection for contagious or infectious diseases. After the making of such proclamation it shall be the duty of the owner or person in charge of sheep against which quarantine has been declared, to notify the territorial veterinary surgeon without delay, and such owner or person in charge shall not allow such sheep to pass over, or upon, any public highway, or upon the ranges of any other sheep, or within two miles of any sheep corral occupied by any other sheep; and any person failing to comply with the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars for each offence and shall be liable for any damages or loss that may be sustained by reason of the failure to comply with the provisions of this section.

Duty of owner of such sheep

Tax to be levied

SEC. 66. Hereafter it shall be the duty each year of the county commissioners of the several counties of this territory to levy a special tax not exceeding one-half of a mill on the dollar, or so much thereof as may be necessary, on the assessed valuation of all the sheep in their counties, to be known as a sheep inspector and indemnity fund. Said tax shall be levied and collected by the several counties and paid to the territorial treasurer in the same manner as is provided by law for the levy and collection of other taxes. Such fund shall constitute the sheep inspector and indemnity fund, to be used in the payment of the salaries and expenses of such skilled assistants as the veterinary surgeon may employ, as provided for in section 73 of this act, and all other expenditures arising from the provisions of this act, except the pay of the veterinary surgeon.

Quarantine.

SEC. 67. Upon receipt of information in writing, over the signature of the president or secretary, and not less than two members of the executive committee of any regularly organized territorial, district, or county wool-growers association, that any sheep are infected with scab or infectious diseases, such notice

—39

shall be *prima facie* evidence that such disease exists, and the territorial veterinary surgeon, or his deputy, shall immediately cause the diseased sheep, and all sheep running in the same flock with them, to be examined, and if found so diseased to be quarantined and held within a certain limit, or place to be defined by him, and such sheep shall be held in quarantine until the owner or person in charge shall have eradicated such scab or infectious disease effectually. The expense of feeding, holding, clipping, and taking care of all sheep quarantined under the provisions of this act shall be paid by the owner, agent, or person in charge of said sheep.

Inspection and certificate.

SEC. 68. It shall be the duty of the veterinary surgeon, or his deputy surgeon, to inspect all sheep of which he may receive notice as provided in section 67 of this act, and in case the same be not diseased he shall make a certificate stating such fact. But if the sheep are diseased the regulations for their quarantine and keeping shall at once be made.

Quarantined sheep, how moved.

SEC. 69. In no case shall any sheep held in quarantine be moved or transferred until the disease shall have been thoroughly eradicated, and a certificate made by the veterinary surgeon, stating that he has examined said sheep and that the same are free from scab or infectious diseases: *Provided*, such sheep may be transferred and removed with the written consent of all sheep owners, or managers, along the route and in the vicinity of the proposed location. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than two hundred dollars nor more than five hundred dollars for each and every offence.

Importation from infected district prohibited.

SEC. 70. Whenever the governor of the territory shall have good reason to believe that any disease, covered by this act, has become epidemic in certain locations in any other state or territory, or that conditions exist which render sheep liable to convey disease, he shall thereupon, by proclamation, schedule such localities and prohibit the importation from them of any sheep into this territory, except under such restrictions as he, after consultation with the territorial veterinary surgeon, may deem proper. Any corporation, person, or persons, who, after the publication of such proclamation, shall knowingly receive in charge any such sheep from any one of the said prohibited districts and transport or convey the same within the limits of this territory, shall be deemed guilty of a misdemeanor, and, upon conviction, be fined not less than five hundred dollars and not more than ten thousand dollars for each and every offence, and shall further become liable for any and all damages and loss that may be sustained by any person, or persons, by reason of the importation or transportation of such prohibited sheep.

Owner to report diseased sheep

SEC. 71. It shall be the duty of any person, or persons, who shall have or suspect that there is upon his or their premises, or upon the public domain, in their vicinity, any cases of scab, contagious or infectious diseases among sheep, to immediately report the same to the territorial veterinary surgeon, and any failure to do so, or any attempt to conceal the existence of such scab or infectious disease, or wilfully or maliciously obstruct or resist the veterinary surgeon in the discharge of his duty, as hereinbefore set forth, shall be deemed a misdemeanor, and any person, or persons, who shall be convicted of so obstructing or resisting said veterinarian, shall be fined not less than twenty-five dollars nor more than five hundred dollars for each offence.

Report of surgeon.

SEC. 72. The territorial veterinary surgeon shall make a report at the end of each year to the governor of all matters connected with his work, and the governor shall transmit to the several boards of county commissioners such parts of said report as may be of general interest to owners and breeders of sheep.

Assistants.

SEC. 73. The territorial veterinary surgeon, for the purpose of carrying into effect the provisions of this act, is hereby authorized and directed to employ such skilled assistants as he may require, not to exceed one in each county, at any time, and that said assistant shall receive, upon the certificate of the territorial veterinary surgeon, the sum of six dollars for each day necessarily employed, and actual traveling expenses, to be paid for out of the territorial treasury as other money is paid.

Laws repealed.

SEC. 74. Sections 14, 15, 16, 17, 19, 20, 21, 22 and 23 of article seven of the fifth division of the revised statutes, and an act to prevent the spread of contagious diseases among sheep, approved March 5, 1883, be and the same are hereby repealed.

Takes effect June 1 1887

SEC. 75. This act shall be in force and take effect from and after June first, A. D. 1887.

NOTE.—Sections 65 to 75 both inclusive are respectively sections 1 to 11 both inclusive and comprise all of "An act to suppress and prevent dissemination of scab and infectious diseases among sheep," approved March 10th, 1887.

CHAPTER V.

ANIMALS—RAMS, HE GOATS AND DISEASED ANIMALS NOT TO RUN AT LARGE.

Sec. 76. Rams and he goats not to run at large during certain seasons.
Sec. 77. Penalty for violation of this law.
Sec. 78. Damages may be recovered.
Sec. 79. Diseased animals prohibited from running at large—penalty.

Rams and he-goats, when not to run at large

Sec. 76. That hereafter it shall be unlawful for any owner or owners or persons having the management or control of any ram or rams, he goat or he goats to permit the same to run at large between the first day of August and the first day of December of each year.

Penalty

Sec. 77. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction, shall be fined for each and every ram or he goat so running at large for the first conviction five dollars, together with costs of prosecution, and for each any every subsequent conviction not more than ten nor less than five dollars for each and every ram or he goat so running at large together with costs of prosecution. Every such fine, when collected, to be paid into the county treasury, to the benefit of the school fund of the county where such conviction is had.

Damages may be recovered

Sec. 78. Nothing herein contained shall prevent any person or company damaged by rams, he goat or he goats running at large during the time mentioned in section 76 of this act from prosecuting and recovering in a civil action any damages sustained thereby.

Note—Sections 76, 77 and 78 are respectively sections 1, 2, 3 and omprise all of "An act to prevent rams and he goats from running at large," approved March 1, 1887.

Diseased animals not to run at large.

Sec. 79. It shall be unlawful for the owner or owners, or for any person or persons, having in charge any horse, mule, ass, sheep or cattle affected with any contagious disease, to allow such diseased animal or animals to run on any range or within any enclosure where such animals may come in contact with any other animal not so diseased. All animals so affected with contagious disease shall be at once removed by the owner or owners thereof, or the person or persons in charge of the same, to some secure inside enclosure, where contact with other animals by reaching over or through the fence of said inclosure will be impossible, or shall be strictly herded six miles away from any farm or from any other stock running at large or being herded. Every person who shall knowingly neglect or refuse to remove, or so enclose or herd away from farms or other stock such diseased animals affected with contagious disease, shall be liable to arrest and on conviction before any court of competent jurisdiction shall be fined in any sum not less than fifty dollars, nor more than five hundred dollars, and shall also be liable for damages to the party or parties injured by such diseased animals, after having received notice of their diseased condition.

Penalty.

NOTE—Section 79 is section 1 and comprises all of "An Act to prevent diseased animals running at large on the public range," approved March 9, 1887.

CHAPTER VI.

FRAUDULENT PEDIGREES OF LIVE STOCK.

Sec. 80. Making false pedigree punished.
Sec. 81. False statement as to pedigree punished.

Making false pedigree punished.

SEC. 80. It shall hereafter be unlawful for any person to make or cause to be made, and publish or deliver, or use any false or fraudulent pedigree of any horse, cow, sheep or other domestic animal, for the purpose of enhancing the value of such animal, and any person so offending shall be deemed guilty of a misdemeanor, and shall, upon conviction, be fined not less than fifty dollars nor more than five hundred dollars, or be imprisoned in the county jail not less than thirty nor more than ninety days, or by both such fine and imprisonment.

Misrepresenting pedigree punished.

SEC. 81. Any person who shall, by statements or misrepresentations, concerning a false or (misrepresenting on a) fraudulent pedigree, sell to another person any domestic animal, not of the breeding, or pedigree as represented, shall be liable to the purchaser of such animal, in a civil action for double the value of such animal, and may upon conviction be punished by a fine not less than twenty-five dollars, or by imprisonment in the county jail not less than thirty nor more than ninety days, or by both such fine and imprisonment.

NOTE—Sections 80 and 81 are respectively sections 1 and 2 and comprise all of "An act to punish persons for making fraudulent pedigrees of live stock;" approved March 7, 1887

CHAPTER VII.

ARBITRATION—TERRITORIAL BOARD.

Sec. 82. Appointments, qualifications, etc., of territorial board of arbitration.
Sec. 83. Board to visit locality of dispute and advise disputants.
Sec. 84. Application to board, notice of hearing.
Sec. 85. Board to make written decision.
Sec. 86. Binding force of decision.
Sec. 87. Parties may agree upon arbitrators.
Sec. 88. Compensation of arbirators.

Appointment of arbitrators.

Sec. 82. The governor of the territory shall upon the passage of this act by the legislative assembly, and before the close of the fifteenth regular session of the legislative assembly of the Territory of Montana and every two years thereafter with the advice and consent of the legislative council, appoint three competent persons to serve as a territorial board of arbitration and conciliation in the manner hereinafter provided. One of them shall be an employer or selected from some association representing employers of labor; one of them shall be a laborer or selected from some labor organization, and not an employer of labor, and the third shall be a citizen who will not probably be directly interested in any dispute between employers and employes. They shall hold office for two years or until their successors are appointed and qualified, and if a vacancy occurs, the governor shall appoint some one to serve out the unexpired term. The members of said board shall before entering upon the duties of their office be sworn to a faithful discharge thereof, they shall within thirty days after their appointment, organize, by the choice of one of their number as chairman and one as clerk of said board. The board shall as soon as possible after its organization, establish such rules or procedure, as shall be approved by the governor.

Qualifications.

Tenure and oath of office.

Visit to locality of dispute.

Sec. 83. Whenever any controversy or differences not involving questions which may be the subject of a suit at law or bill in equity exists between an employer, whether an individual, copartnership or corporation and his employes, if at any time he employes not less than twenty persons in the same general line of business in this territory, the board shall, upon application as hereinafter provided, and as soon as practicable thereafter, visit the locality of the dispute and make careful inquiry into the cause thereof, hear all persons interested therein who may come before them, advise the respective parties what, if anything ought to be done, or submitted to by either or both, to adjust said dispute and make a written decision thereof. The decision shall at once be made public, shall be recorded upon proper books of record, to be kept by the clerk of said board, and a short statement thereof published in the annual report hereinafter provided for, and said board shall cause a copy thereof to be filed with the clerk of the county where said business is carried on.

Decision.

SEC. 84. Said application to the board of arbitration shall be signed by said employer, or by a majority of his employes in the department of the business in which the controversy or difference exists, or by both parties, and shall contain a concise statement of the grievances complained of, and a promise to continue on in business or at work, without any lockout or strike until the decision of said board, if it shall be made within four weeks of the date of filing said application. Immediately upon the receipt of said application the clerk of said board shall cause public notice to be given of the time and place for hearing. Should the petitioner, or petitioners, fail to perform the promise made therein, the board shall proceed no further thereupon without the written consent of the adverse party.

Application.

SEC. 85. Upon the receipt of such application, and after such notice, the board shall proceed, as before provided, and render a written decision, which shall be open to public inspection, shall be recorded upon the records of the board, and a copy thereof filed with the county clerk and published in the annual report to be made to the governor on or before the thirty-first day of December in each year.

Decision to be public.

SEC. 86. Said decision shall be binding upon the parties who join in said application for six months, or until either party has given the other notice, in writing, of his intention not to be bound by the same, at the expiration of sixty days therefrom. Said notice may be given to employes by posting the same in three conspicuous places in the shop, office, factory, store, or mill or mine where said employes work.

Binding force of decision.

SEC. 87. The parties to any controversy or difference, as provided in section 84 of this act, may agree upon a board of arbitration and conciliation, who shall in the matters referred to them have and exercise all the powers which the territorial board

Parties may agree upon arbitrators.

might have and exercise, and their jurisdiction of the matter referred to them shall be exclusive, except that they may ask and receive the advice and assistance of the territorial board in the disposition of the matters submitted to them for their determination. The report of any board, constituted under the provisions of this section, shall at once be filed with the clerk of the county in which the controversy or difference arose. and a copy thereof shall be forwarded to the territorial board and entered upon its records.

Per diem and expenses of arbitrators.

Sec. 88. The arbitrators hereby created shall be paid five dollars for each day of actual service and their necessary traveling expenses, and such expenses as are provided for in this act, to be paid out of the treasury of the territory, and the territorial auditor is hereby authorized to draw warrants for the amounts, upon presentation of itemized bills, certified and sworn to by said arbitrators.

Note.—Sections 82 to 88, both inclusive, are respectively sections 1 to 7, both inclusive, and comprise all of "An act to provide for a territorial board of arbitration for the settlement of differences between employers and employes," approved February 28, 1887.

CHAPTER VIII.

ARSENAL, ARMS AND AMMUNITION.

Sec. 89. Keeper of arsenal to report.
Sec. 90. Duty of keeper.
Sec. 91. Bond and official oath.
Sec. 92. Governor to collect arms; salary of keeper.
Sec. 93. Bond of party who receives arms.
Sec. 94. Appropriation.
Sec. 95. Governor to take charge of arms and military stores.
Sec. 96. Governor authorized to sell arms, etc.
Sec. 97. Certain law repealed.
Sec. 98. Governor to give bonds for arms, etc.
Sec. 99. Secretary to countersign bond.
Sec. 100. Public faith pledged.
Sec. 101. Record of bonds to be kept.

Annual report.

Sec. 89. It shall be the duty of any keeper of the arsenal, military stores, ammunition, arms and ordnance belonging to this territory, on the first day of February, A. D., eighteen hundred and seventy-two, and on the first day of January of each year thereafter, to report to the governor in writing the amount of such military stores and ammunition, and a list and description of such arms and ordnance in his possession and within his knowledge.

To take care of property.

SEC. 90. It shall be the duty of the keeper to take care of and preserve the same, and deliver the same only upon the written order of the governor.

Bond.

SEC. 91. Such keeper shall, before entering upon the duties of his office, file with the territorial secretary his official bond, in the sum of one thousand dollars, with two good and sufficient sureties, to be approved by the governor, conditioned for the faithful performance of the duties of his office, and shall also file his oath of office with the secretary; and any such keeper now holding such office, shall within thirty days file such bond and official oath, or his office will be deemed vacant.

To collect arms; salary of keeper

SEC. 92. The governor is hereby authorized to collect at the capital all the arms and ammunition, ordnance, military stores and equipments, and place them in a suitable building in charge of a keeper, at a salary not to exceed two hundred dollars per annum.

Bond.

SEC. 93. It shall be the duty of the governor to require of any person to whom such arms, ammunition, ordnance, military stores or equipments may be delivered, to execute a bond to the territory in the sum not to exceed the value thereof with such sureties as may be approved by him, conditioned for the safe keeping of the same, and the return thereof on the demand of the governor, unless the same shall have been delivered to the county commissioners of any county, when the same shall be charged to such county at the value thereof, to be returned when called for by the governor.

Appropriation

SEC. 94. The sum of one hundred and fifty dollars is hereby appropriated out of the territorial treasury to defray the expenses of collecting such arms, etc., as required in section 92.

NOTE—Act January 6, 1872

Governor to take charge of military stores.

SEC. 95. The governor as commander-in-chief of the national guard of Montana, is charged with the duty of removing to, receiving and collecting at the seat of government all the ordnance, and other military stores and materials belonging to the territory, not in actual use by any organized company of the national guard, and of securing and providing storage for the same, and for all other arms, ammunition and other military stores and supplies which may be at any time acquired by the territory, to the end that the same may be preserved for the use of the national guard; and all expenses necessarily incurred in that behalf shall be paid by the territory, and the territorial auditor is hereby authorized and directed to draw his warrant on the territorial treasurer for such amount as may be certified to him by the governor as being due: *Provided*, That no appropriation now provided by law, shall be affected hereby, but such appropriation shall be limited to the purposes specified.

May sell arms, etc

SEC. 96. The governor is hereby authorized to sell at public or private sale, as he shall elect, the building owned and used by the territory as an arsenal at Virginia City, and such arms, ammunition and other ordnance stores as he may deem advisable to dispose of, pay the proceeds of such sale to the territorial treasurer and execute his deed to the purchasers with the seal of the territory thereto affixed by the secretary of the territory.

Repeal.

SEC. 97. Article 3 of chapter 2, fifth division, revised statutes of Montana, is hereby repealed.

NOTE.—Sections 95, 96 and 97 are respectively sections 1, 2, 3 and comprise all of "An act for keeping the military stores and for other purposes," approved March 7, 1887

Governor authorized to give bonds for arms, etc.

SEC. 98. That the governor of the territory be and he is hereby authorized and required to execute in the name and for the benefit of the people of the territory any good and sufficient bonds in such sums as may be deemed proper to the secretary of war, or any other officer of the United States conditioned for the return by the territory of such arms, ordnance stores and ammunition, as may be issued to any person duly empowered to receive the same in behalf of the territory, under the joint resolutions of Congress, approved July 3rd, 1876, and June 7th, 1878, and the acts and resolutions amendatory thereof providing for the issue of said arms, ordnance, stores and ammunition to the territories or the payment for the same by the territory at such times as the secretary of war may designate, as provided by the laws of the United States.

Secretary to countersign bonds.

SEC. 99. That the secretary of the territory shall countersign and affix the seal of the territory to all bonds which shall be executed by the governor under the provisions of section 98 of this act.

Public faith pledged.

SEC. 100. That the public faith of the territory is hereby pledged for the faithful performance by the territory of all the conditions of the bonds hereinbefore specified.

Record and report of bonds

SEC. 101. That the governor shall keep a record showing the penal sum and the date of execution, sealing and acceptance or approval of all bonds provided for by this act and make a report thereof to each legislative assembly of the territory.

NOTE—Sections 98, 99, 100 and 101 are respectively sections 1, 2, 3 and 4. and comprise all of "An act to authorize the governor to execute bonds for arms for the militia," approved February 1st, 1887.

CHAPTER IX.

ATTORNEYS AND COUNSELORS AT LAW.

Sec. 102. No person permitted to practice as an attorney without license.
Sec. 103. No one to receive license without certificate of moral character.
Sec. 104. Supreme court to appoint examining committee.
Sec. 105. Clerk of supreme court to keep record of names.
Sec. 106. No one to practice whose name not on roll.
Sec. 107. Attorney not paying over money may be stricken from the roll.
Sec. 108. Clerk to notify attorney of charges against him.
Sec. 109. Officers of court subject to same process as others, but privileged from arrest during court.
Sec. 110. Attorneys in other states—how admitted.
Sec. 111. Any person not licensed receiving fees may be sued for treble amount, and prosecuted for signing name of judge or attorney.
Sec. 112. No renewal of license required.
Sec. 113. Attorneys of adjacent states admitted to transact business.
Sec. 114. Attorneys to be admitted to prisoners.
Sec. 115. No attorney to become security on bonds.
Sec. 116. To have lien on judgment for fees.

Not to practice without license

SEC. 102. No person shall be permitted to practice as and defend any action, suit or plaint, in which he is not a party concerned, in any court of record within this territory, either by using or subscribing his own name, or the name of any other person, without previously having obtained a license for that purpose from some two of the justices of the supreme court, which license shall constitute the person receiving the same an attorney and counselor at law, and shall authorize him to appear in all the courts of record within this territory, and there to practice as an attorney and counselor at law, according to the laws and customs thereof, for and during his good behavior in said practice, and to demand and receive all such fees as an attorney and counselor at law in this territory.

Certificate.

SEC. 103. No person shall be entitled to receive license aforesaid until he shall have obtained a certificate from the court of some county, of his good moral character, also a certificate from one or more reputable counselors at law, that he has been engaged in the study of law for two successive years prior to the making of such application.

Examining committee

SEC. 104. It shall be the duty of the supreme court to appoint a standing committee of three attorneys at law for each judicial district of this territory. whose duty it shall be to examine all applicants for license as aforesaid, and if, upon such examination, a majority of such committee shall deem the applicant qualified to practice as an attorney and counselor at law in the courts of this territory, they shall sign a certificate to that effect, and transmit the same to the clerk of the supreme court.

Roll of attorneys.

SEC. 105. It shall be the duty of the clerk of the supreme court to make out and keep a roll or record stating at the head or commencement thereof, that the persons whose names are therein written have been regularly licensed and admitted to practice as attorneys and counselors at law within this territory, and that they have duly taken the oath to support the constitution of the United States and the organic act of this territory, and also the oath of office prescribed by law, which shall be certified and endorsed on said license.

Name be stricken from roll

SEC. 106. And no person whose name is not subscribed to or written on the said roll, with the day and the year when the same was subscribed thereto, or written thereon, shall be suffered or admitted to practice as an attorney or counselor at law within this territory, under the penalty hereinafter mentioned, anything in this act to the contrary notwitstanding; and the justices of the supreme court in open court shall have power, at their discretion, to erase the name of an attorney or counselor at law from the roll for mal-conduct in his profession.

Same

SEC. 107. In all cases where an attorney of any court of this territory, or solicitor in chancery, shall have received, or may hereafter receive, in his said office of attorney or solicitor, in the course of collection or settlement, any money or other property belonging to any client, and shall, upon demand made, and a tender of his reasonable fees and expenses, refuse or neglect to pay over or deliver the same to the said client, or to any person duly authorized to receive the same, it shall be lawful for any person interested to apply to the supreme court of this territory for a rule upon the said attorney or solicitor to show cause, at a time to be fixed by the said court, why the name of said attorney or solicitor should not be stricken from the roll, a copy of which rule shall be duly served on said attorney or solicitor at least ten days previous to the day upon which said rule shall be made returnable; and if, upon said rule, it shall be made to appear to the said court that such attorney or solicitor has improperly neglected or refused to pay over or deliver said money or property so demanded as aforesaid, it shall be the duty of said court to direct that the name of said attorney or solicitor be stricken from the roll of attorneys in said court.

Complaint and trial.

SEC. 108. Every attorney, before his name is stricken off the roll, shall receive a written notice from the clerk of the supreme court, stating distinctly the grounds of complaint, or the charges exhibited against him, and he shall, after such notice, be heard in his defence, and allowed reasonable time to collect and prepare testimony for his justification; and any attorney whose name shall at any time be stricken from the roll by order of the court, in the manner aforesaid, shall be considered as though his name had never been written thereon, until such time as the said justice, in open court, shall authorize him to sign or subscribe the same.

Subject to arrest except while attending court.

SEC. 109. All attorneys or counselors at law, judges, clerks, and sheriffs, and other officers of the several courts within this territory, shall be liable to be arrested and held to bail, and shall be subject to the same legal process, and may, in all respects, be prosecuted and proceeded against in the same court and in the same manner as other persons are, any law, usage, or custom to the contrary notwithstanding; *Provided, nevertheless*, said judge, counselors, and attorneys of said court, shall be privileged from arrest while attending courts, and while going to and returning from court.

Attorneys from other states.

Sec. 110. Any person producing a license or other satisfactory voucher proving that he hath been regularly admitted an attorney at law in any court of record within the United States, that he is of good moral character, may be licensed and permitted to practice as a counselor and attorney at law in any court in this territory without examination.

Money paid unlicensed attorney may be recovered

Sec. 111. If any person not licensed as aforesaid shall receive any money or any species of property as fee or compensation for services rendered or to be rendered by him as attorney or counselor at law within this territory, all money so received by him shall be considered as money received to the use of the person paying the same, and may be recovered back with costs of suit by an action for money had and received, and all property conveyed or delivered for the purpose aforesaid, or the value thereof, may be recovered back with costs of suit by the person conveying or delivering the same, by action of detinue or trover and conversion, and the person receiving such money or property shall forfeit threefold the amount or value thereof, to be recovered with costs of suit before any magistrate, if within a magistrate's jurisdiction, but if not, in any court of record within the territory, by action of debt qui-tam, the one-half to the use of the person who shall sue for and recover the same, and the other half to the use of the county in which such suit shall be brought, and if any person shall sign, or cause to be signed, the name of any attorney, or either of the judges of the supreme court, to any certificate or license provided for in this chapter, with an intent to deceive, such person shall be deemed guilty of forgery, and shall be prosecuted and punished accordingly.

Party may appear in person.

Sec. 112. Plaintiff shall have the liberty of prosecuting, and defendant shall have the privilege of defending in their proper persons, and nothing herein contained shall be so construed as to affect any person heretofore admitted to the degree of attorney or counselor at law in this territory, so as to subject them to further examination, or to make it necessary for them to renew their license.

Courtesy to non-resident attorney

Sec. 113. Whenever any counselor at law residing in any of the adjacent states or territories may have any business in any of the courts of this territory, he may be admitted on motion for the purpose of transacting such business and none other.

Attorney may see prisoner.

SEC. 114. All public officers, sheriffs, coroners, jailers, constables, or other officers or persons, having in custody any person committed, imprisoned, or restrained of his liberty, for any alleged cause whatever, shall admit any practicing attorney at law in this territory whom such person restrained of his liberty may desire to see or consult, to see and consult such person so imprisoned alone and in private, at the jail, or other place of custody. Any officer violating this provision shall forfeit and pay one hundred dollars to the person aggrieved, to be recovered by action of debt in any court of competent jurisdiction.

Attorney not to become surety on bond.

SEC. 115. No attorney or counselor at law or solicitor in chancery shall become security in any bond or recognizance of any sheriff, constable, or coroner, or in any bond or recognizance for the appearance of any person or persons charged with any public offence, or upon any bond or recognizance authorized by any statute to be taken for the payment of any sum of money into court in default of the principal, without the consent of the judge of the district court first had, approving said security.

Attorney's lien

SEC. 116. All attorneys and counselors at law shall have a lien upon all moneys in their hands, and upon all judgments they may have obtained for any clients for any fees or balance of fees due or to become due, for any professional services rendered by them in any court or courts of this territory; such lien to be deemed to attach from the commencement of such action or the performance of such services; and shall extend to and include reasonable fees therefor: *Provided*, That notice of lien claimed upon any judgment shall be filed in the office of the clerk of the court in which the judgment is obtained, or with the probate judge or justice of the peace rendering judgment, within three days after final judgment shall have been entered, and it is hereby made the duty of the clerk of the court, probate judge, or justice of the peace, with whom such notice shall be filed, to endorse on such notice the date of filing, and to file the same with the papers pertaining to the cause. And, in case notice of lien shall not be filed as aforesaid, the lien shall not attach to such judgment.

CHAPTER X.

TERRITORIAL AUDITOR AND TRESURER, AND TERRITORIAL AND COUNTY TREASURERS.

Sec. 117. Auditor to issue no warrant without express authority.
Sec. 118. Auditor to keep record of warrants and report to the legislature.
Sec. 119. To furnish collectors of counties with blanks.
Sec. 120. Auditor to prosecute all delinquent collectors or debtors.
Sec. 121. To audit all claims against treasurer.
Sec. 122. To be custodian of books, records, and property of the territory.
Sec. 123. To furnish the governor with information regarding revenue.
Sec. 124. Shall report to the legislature state of revenue and income; guilty of misdemeanor for not reporting.
Sec. 125. Auditor and treasurer to perform all duties required by law; auditor to state amount against delinquents and keep office open to governor and legislature.
Sec. 126. Keep office at the capital.
Sec. 127. Auditor shall make quarterly report of expenses.
Sec. 128. Auditor to receive salary.
Sec. 129. Treasurer to pay warrants on order presented and render quarterly accounts.
Sec. 130. List of warrants ready for payment to be posted on door of office.
Sec 131. Treasurer to keep office at seat of government and open to governor and legislature.
Sec. 132. To make quarterly reports.
Sec. 133. To give receipts for money paid in.
Sec. 134. Salary of treasurer.
Sec. 135. Auditor and treasurer to have access to each other's offices.
Sec. 136. Authority to administer oaths by auditor and treasurer.
Sec. 137. Auditor to give bond; approval of same.
Sec. 138. Treasurer to give bond; approval of same.

Sec. 139. Auditor, treasurer, and superintendent of public instruction to report to governor.
Sec. 140. End of fiscal year.
Sec. 141. Examination of county treasurer's books.
Sec. 142. Governor to examine books of territorial treasurer.
Sec. 143. Secretary to file and preserve reports of governor.
Sec. 144. Removal of territorial treasurer and new appointment.
Sec. 145. County commissioners to remove county treasurer and appoint new one.
Sec. 146. Quarterly settlement of county treasurer.
Sec. 147. Clerk to make certified statement of settlement.
Sec. 148. Penalty if treasurer refuse to comply.
Sec. 149. Treasurer to make oath that money belongs to county.

Auditor: duty as to issuing warrants.

SEC. 117. That the auditor of the territory shall issue no warrants drawn upon the territorial treasurer in favor of any person, without express authority of law, and then shall specify the name of the party, the service performed for which the same is issued, with the amount and number of the warrant.

To keep record of warrants.

SEC. 118. The auditor shall keep a record of all warrants issued by him, and shall report to the legislative assembly of the territory, at the commencement of each session thereof, the number and amount of warrants issued by him, and under what law the same have been issued.

14th ses. p. 129

Blank licences and receipts.

SEC. 119. The territorial auditor shall furnish the collector of each county with blank licenses and receipts for money collected, or to be collected, subscribed by himself or his engraved *fac simile* signature, taking the receipt of the collectors of the counties for the same.

NOTE—Section 119 from Act of March 12, 1885.

To direct prosecutions.

SEC. 120. He shall direct prosecution in the name of the territory against all delinquent collectors of the territorial revenue, and against all debtors of the territory, or persons being in possession of the public funds, money or property, who may neglect or refuse to pay or deliver the same to the proper officer.

To audit claims.

SEC. 121. He shall audit all claims against the treasury, and when the law recognizes a claim, but no appropriation has been made therefor, shall settle the claim and give the claimant a certificate thereof, and report the same to the legislative assembly.

To be custodian of certain books, etc

SEC. 122. He shall be the custodian of, and shall keep all books, papers, records, documents, vouchers and all conveyances, leases, mortgages, bonds and other securities appertaining to the fiscal affairs and property of the territory which are not required by law to be kept in some other office; and to have charge of all other property of the territory where no other provision is made by law for its custody.

To inform governor.

SEC. 123. He shall furnish to the governor on his requisition, information in writing upon any subject connected with his office, and suggest to the governor, or to the legislative assembly, plans for improvement and management of the public revenue and property.

To make report.

SEC. 124. He shall report to the legislative assembly, at its regular session in this territory, and at such other times as it may require, a complete statement of the revenue, funds, income, taxable property, and other resources of the territory, and of the property of the territory known to his office; and of the public revenue and expenditures of the territory since his last report, up to the Monday immediately preceding each regular session, with a detailed estimate of the expenditures to be defrayed by the treasury for the ensuing year, specifying each object of expenditure, and distinguishing between such as are provided for by appropriations, and such as are by law required to be provided for, and the amount of probable deficiency of any former appropriations. He shall make a full detailed statement of all expenditures, claims and demands by him audited and allowed; and shall, in his report, give separately the items and claims of each and all persons in whose favor he has audited any demand, and under what law allowed, and the date of the allowance. In case any auditor or treasurer shall fail or refuse to make his settlement or statement at the time and in the manner required in this act, he shall be deemed guilty of a misdemeanor; and if he shall still refuse to settle, upon being requested by the legislative assembly, it shall be the duty of the president of the council to issue his warrant for the apprehension of such auditor or treasurer, and cause them or either of them to be brought before the council to show cause why he refuses to comply; and the president, if proper cause is not shown, may commit him or them to the territorial prison until he or they shall make such settlement.

Penalty if auditor or treasurer fail to report.

Other duties of auditor and treasurer

SEC. 125. The auditor and treasurer shall perform all other duties which may from time to time be required of them by law, and if any officer who is accountable to the treasurer in respect to any money or property, neglects to render his accounts to the auditor within the time prescribed by law, or if no such time be prescribed by law, then within twenty days after he be required so to do by the auditor, the auditor shall state an amount (account) against him from the books of the auditor's office, charging ten per cent. damages on the whole sum appearing due, and interest at the rate of ten per cent. per annum on the aggregate from the time when the account should have been rendered; all of which shall be recovered by an action brought on such account stated, or on the official bond of the officer. If any such officer fails to pay into the treasury the amount received by him within the time prescribed by law, or, having settled an account with the auditor, fails to pay the amount due from him, the auditor shall charge him twenty per cent. damages on the amount due, with interest on the aggregate, from the time the first sum was payable, at the rate of ten per cent. per annum; and the whole may be recovered by an action brought on either such account stated, or on the official bond of the officer; and he shall forfeit his commission; the penal provisions in this being subject to any legal defence which the officer may have against the account as stated by the auditor; but judgment for costs shall be rendered against the officer in the action, whatever be its result, unless he rendered an account within the time mentioned in this section. In those cases where the auditor is authorized to call upon persons or officers for information or statements, or to render accounts, he may issue his requisition therefor to the person or officer called upon, allowing reasonable time, which being served as a notice in a civil action by the sheriff or any constable of the county in which the person or officer called upon resides or exercises his office; and the sheriff or constable shall return the notice to the auditor with the service endorsed thereon, which shall be evidence of the making of the requisition therein expressed. All things pertaining to the auditor's office are at all times open to the inspection of the governor and members of the legislative assembly of the Territory of Montana; and to any committee appointed by either house of the legislative assembly appointed to examine the same.

Office of auditor.

SEC. 126. The auditor shall keep his office at the seat of government, and shall furnish his office with all needful blanks, maps, books, stationery, fuel, and cases for books, etc.

Quarterly report.

SEC. 127. The auditor shall make a quarterly report of the expenses of his office, specifying each item and to whom paid.

NOTE.—Sections 117 to 127, both inclusive, are from Act January 12, 1872, except section 119, which is from Act of March 12, 1885.

Salary of auditor.

SEC. 128. That the territorial auditor shall receive a salary of twenty-five hundred dollars a year, to be paid in the same manner as the treasurer is paid; and all fees received by the auditor shall be covered by him into the territorial treasury.

NOTE.—Section 128 is as amended by section 1 of "An act to amend sections 71, 77, 80 and 81 of the Fifth Division of the Revised Statutes of Montana increasing the salaries and bonds of the territorial auditor and treasurer," approved March 5, 1887: the remainder of said section 1 being the introductory clause as follows: "Section 1. That section 71 of the Fifth Division of the Revised Statutes of Montana be amended to read as follows."

Duties of territorial treasurer.

SEC. 129. It shall be the duty of the territorial treasurer to keep a book in which he shall enter all territorial warrants presented for payment, which shall bear date subsequent to the thirty-first day of October, A. D. 1867, giving the name of the owner, the number and amount of the warrants; and they shall be paid in the order in which they are presented; and to keep a true account of all money received, and the disbursements thereof. He shall render his accounts to the auditor for settlement quarterly, or oftener, if required; and he shall also report to the legislative assembly at the commencement of each regular session, the condition of the treasury, and its condition for the preceding year.

Same.

SEC. 130. The treasurer shall quarterly post upon the door of his office, and publish in some newspaper published at the seat of government, a list of all warrants that he may have funds in the treasury to redeem or pay, the payment of which has not been demanded during the quarter last; and from the date of such notice the interest on all such warrants thus posted shall cease; but the treasurer shall hold in readiness such moneys to pay such warrants upon presentation.

Office of treasurer.

SEC. 131. The treasurer shall keep his office at the seat of government, which shall be furnished at the expense of the territory with all needful maps, books, blanks, cases for books, stationery, fuel, etc., necessary; and his books shall be open at all times for the inspection of the governor, the members of the legislative assembly, and to any committee appointed to examine them by either house thereof.

SEC. 132. The treasurer shall make a quarterly report to the auditor of the expense of his office, specifying each item and to whom paid.

Quarterly report

SEC. 133. When any amount is paid into the treasury, the treasurer is required to give the person paying, duplicate receipts, stating the funds to which the money belongs, one of which may be kept by him and the other must be delivered to the auditor, in order to obtain proper credit; and the amount shall be charged to the treasurer.

To give receipts

NOTE.—Sections 129 to 133, both inclusive, are from Act of January 12th, 1872

SEC. 134. That the territorial treasurer shall receive a salary of twenty-five hundred dollars a year, which shall be paid quarterly, out of the territorial treasury, by warrant on the general fund.

Salary of treasurer

NOTE—Section 134 is as amended by section 2 of the act specified in note to section 128, the remainder of said section 2 being the introductory clause, as follows "Section 2 That section 77 of the fifth division of the Revised Statutes of Montana be amended to read as follows"

SEC. 135. The auditor and treasurer shall have full access to each other's office for the inspection of all books, papers, and accounts thereof; and to all other offices of the territory for the inspection of all such books as concern their duties.

Access to offices

SEC. 136. They are authorized to administer oaths or affirmations, compelling the attendance of witnesses as in courts of record, in all cases touching the duties of their offices respectively.

To administer oaths, etc.

SEC. 137. The auditor shall be required to give a bond with two or more sufficient sureties, in the sum of twenty thousand dollars, to be approved by the governor or acting governor and secretary or acting secretary of the territory, before entering upon the duties of his office, and whenever the governor or acting governor and secretary or acting secretary shall deem his bond insufficient thereafter, the governor or acting governor and secretary or acting secretary shall require, and it shall be the duty of the auditor to file one sufficient according to law.

Auditor's bond

NOTE—Section 137 is as amended by section 3 of the act specified in note to section 128, the remainder of said section 3 being the introductory clause, as follows "Section 3 That section 80 of the fifth division of the Revised Statutes of Montana be amended to read as follows"

SEC. 138. The treasurer shall be required to give a bond with six or more sufficient sureties, in the sum of one hundred and fifty thousand dollars, to be approved by the governor or acting governor and secretary or acting secretary of the territory, which

Treasurer's bond

bond may be increased from time to time, or new or additional sureties may at any time be required by the governor or acting governor and secretary or acting secretary of the territory, or by the legislative assembly thereof.

NOTE.—Section 138 is as amended by section 4 of the act specified in note to section 128, the remainder of said section 4 being the introductory clause, as follows: "Section 4. That section 81 of the fifth division of the Revised Statutes of Montana be amended to read as follows." Sections 128, 134, 137 and 138, with their introductory clauses as given, comprise all of said act specified in said note to section 128

Reports of auditor, etc., to be examined and published

SEC. 139. The territorial auditor, treasurer, and superintendent of public instruction, are hereby authorized and empowered to report to the governor at the expiration of their term of office in eighteen hundred and sixty-nine, and the governor is hereby authorized to examine and settle their respective accounts and cause to be published a full statement of said accounts in some newspaper published at the capital, and transmit a copy of said report to the legislative assembly.

Fiscal year.

SEC. 140. The first day of December in each and every year shall be the end of the fiscal year for territorial purposes.

Books of county treasurers to be examined.

SEC. 141 It shall be the duty of the county commissioners of the several counties of this territory, at any of their regular meetings, or at such other times as they may select, and not less than twice in each year, to examine the books of the treasurers of their respective counties, and to count the moneys in their possession as such treasurers; and for this purpose, it is hereby made the duty of such treasurers in the several counties, whenever thereto requested by the said county commissioners of their counties, or any two of them, to deliver forthwith to said county commissioners said books, and all of them, and to permit an inspection and count of the funds in their hands, and all of them; and if the said books and moneys shall be found by them to be correct, they shall certify the same over their signatures, and the county clerk shall enter the same in the records of the proceedings of the board of county commissioners.

Books of territorial treasurer and auditor to be examined.

SEC. 142. The governor shall have power and it is hereby made his duty, to examine the books of the territorial treasurer as often as twice in each year, and at such times as he may select, and to count the funds in the hands of such treasurer; and he shall also examine the books of the territorial auditor; and he shall make a report of the result of such examination in writing, and file the same with the secretary of the territory.

Reports of governor

SEC. 143. It shall be the duty of the secretary of the territory to file and preserve the reports of the governor herein provided for.

Duty of governor if territorial treasurer guilty of embezzlement, etc.

SEC. 144. If at any time, upon the examination of the territorial treasury, it shall appear to the governor that the books of the territorial treasurer do not correspond with the amount of funds on hand, or that the said books do not show the actual condition of said office and the funds on hand; or if it shall appear to him that any funds of the territory have been embezzled or diverted from their proper channel, or in any way or manner expended or taken from the treasury without authority of law; or that there is or has been any culpable negligence by said treasurer in the keeping of said books, or the care or keeping of said public moneys, he is hereby empowered, and it is hereby made his duty, forthwith to take possession of the books, moneys, papers and other property of every kind and description, belonging to the territory, or which came to the treasurer's possession by virtue of his said office, and to remove the said treasurer and appoint another in his place, who shall give bonds to the approval of the said governor, and take the oath prescribed by law; which oath shall be taken before some justice of the supreme court, or, in the absence of the said justice, before a probate judge, which oath and bond shall be filed with, and recorded by, the secretary of the territory, and thereupon the governor shall turn over to such treasurer the books, moneys, papers and other property, and take his receipt therefor; and the governor shall make report of his said doings to the succeeding legislative assembly, and the said treasurer shall hold his office until the close of the next legislative assembly.

Duty of county commissioners if county treasurer guilty of embezzlement, etc.

SEC. 145. If at any time, upon the examination of the county treasuries herein provided for, it shall appear to the county commissioners that the books of the county treasurers do not correspond with the amount of funds on hand, or that the said books do not show the actual condition of said office and the funds on hand; or if it shall appear to them that any funds of the county have been embezzled or diverted from their proper channel, or in any way or manner expended or taken from the treasury without authority of law; or that there is or has been any culpable negligence by said treasurer in the keeping of said books, or the care or keeping of the said public moneys, they are hereby empowered, and it is hereby made their duty to forthwith take possession of the books, moneys and papers, and other property of every kind and description belonging to the county, or which came to the possession of said treasurer by virtue of his said office, and appoint another in his place, who shall give bonds to the approval of said county commissioners, and take the oath prescribed by law, which oath shall be taken before an officer authorized by law to administer oaths; which oath and bond shall be filed with the clerk of the board of county commissioners, and thereupon the commissioners shall turn over to such treasurer the books, moneys, papers and other property, and take his receipt therefor, and the said treasurer shall hold his office until his successor shall be elected and qualified.

14th ses. p. 72

Settlement with county treasurer

SEC. 146. Each county treasurer shall, at the expiration of each and every quarter, make a settlement with the board of county commissioners of their respective counties, and shall make a quarterly report of all moneys collected for county and territorial purposes, and shall forthwith, before the board adjourns, transmit such report, together with the amount due the territory, to the territorial treasurer. The third quarter of each fiscal year shall be held to include the first day of December, for the collection and disbursement of the revenues.

If any county treasurer shall neglect or refuse to comply with the provisions of this section he shall be guilty of a misdemeanor, and, on conviction, shall be fined in any sum not exceeding two hundred dollars for each and every day he may neglect or refuse to transmit to the territorial treasurer the amount found due from his county to the territory.

NOTE—Section 146 act of February 27, 1885

Statement of settlement.

SEC. 147. The chairman of the board of county commissioners shall make, or cause to be made, by the clerk of the board, a certified statement of each and every quarterly, annual or final settlement had with said county treasurer, showing the amount collected by said treasurer for territorial purposes; and before the board shall adjourn they shall cause said certified statement to be transmitted to the territorial auditor.

Penalty for failure of officers to comply with demand for examination.

SEC. 148. If any territorial or county treasurer shall refuse to comply with the demand of the officer or officers hereby empowered to examine their books, moneys and papers, or shall wilfully seek or endeavor for any period of time whatever to delay such delivery or examination, or shall refuse to comply with the demand of the governor herein provided for, or the demand of the county commissioners herein provided for, to deliver up any books, moneys, papers or other property belonging to their respective offices, upon receiving notice of their removal, he shall be deemed guilty of a felony, and, being thereof convicted, shall be punished by imprisonment in the territorial prison for a period not less than six months nor exceeding five years.

Oath of treasurer.

SEC. 149. That for the purpose of more fully making such examination, such commissioners shall cause said treasurer to make oath before some person authorized to administer oaths, that the money he represents to said commissioners belongs to the county, and shall also cause a similar oath to be administered to the person or managers of corporations with whom such moneys may be deposited.

NOTE.—Act February 15, 1877, except where otherwise noted

CHAPTER XI.

BASTARDS.

Sec. 150. Arrest and examination of father of bastard and security for support of child.
Sec. 151. Upon failure of the mother, commissioners may sue.
Sec. 152. In case of non-compliance, accused to be bound over.
Sec. 153. When mother unable to attend bond renewed conditioned for appearance at next term.
Sec. 154. Trial by jury and competency of witnesses.
Sec. 155. Putative father to maintain child or be committed.

Proceedings against father of bastard.

SEC. 150. That on complaint to any justice of the peace, in this territory, by any unmarried woman, resident herein, who shall hereafter be delivered of a bastard child, or being pregnant with a child, which, if born alive, may be a bastard, accusing on oath or affirmation, any person of being the father of said child, the justice shall take such accusation in writing, and thereupon issue his warrant directed to the sheriff or constable of any county in this territory, commanding him forthwith to bring such accused person before said justice, to answer such complaint; and on return of such warrant, the justice, in the presence of the accused person, shall examine the complainant under oath respecting the cause of her complaint, and such accused person shall be allowed to ask the complainant when under oath, any question that he may think necessary for his justification; all of which questions and answers, together with every other part of the examination, shall be reduced to writing by the justice of the peace; and if on such examination, the party accused shall pay, or secure to be paid to the complainant such sum or sums of money, or property, as she may agree to receive in full satisfaction, and shall further give bond to the board of county commissioners of the county in which said complainant shall reside, and their successors in office, conditioned to save such county free from all charges towards the maintenance of such child, then and in that case the justice shall discharge the party accused out of custody, on his paying the costs of the prosecution; *Provided*, That the agreement aforesaid shall be made or acknowledged by both parties in the presence of the justice, who shall thereupon enter a memorandum of the same upon his docket.

Commissioners may bring suit.

SEC. 151. That when any woman has a bastard child, and neglects to bring a suit for its maintenance, or commence a suit and fail to prosecute to final judgment, the county commissioners in any county interested in the support of any such bastard child when sufficient security is not offered to save the county from expense, may bring a suit in behalf of the county, against him who is accused of begetting such child, or may take up and prosecute a suit began by the mother of the child.

Accused may be bound over to district court.

SEC. 152. That in case such accused person does not comply with the provisions contained in section 150 of this chapter, the justice to whom such complaint was made shall bind such person in a recognizance to appear at the next sitting of the district court of the district in which said county is situated with sufficient security in a sum not less than five hundred dollars, nor more than one thousand dollars, for the benefit of the county in which such child shall be born, to answer to such accusation and to abide the order of the court thereon, and on neglect or refusal to find such security, the justice shall cause him to be committed to the jail of the county, there to be held to answer such complaint.

Postponement

SEC. 153. That if at the time of such court, the woman be not delivered or unable to attend, the court shall order the renewal of the bonds of recognizance that the accused person shall be forthcoming at the next sitting of the said court after the birth of the child, at which the mother of said child shall be able to attend, and the continuance of such bonds shall be entered by order of said court, unless the security shall object thereto, and shall have the same force and effect as a recognizance taken in court for that purpose.

Trial

SEC. 154. That when such accused person shall plead not guilty to such charge before the court to which he is recognized, the court shall order the issue to be tried by a jury, and at the trial of such issue the examination before the justice shall be given in evidence, and the mother of the bastard child shall be admitted as a competent witness and the credibility be left to the jury: *Provided, always*, That no woman shall be admitted as a witness as aforesaid, who has been convicted of any crime which would by law disqualify her from being a witness in any other case, and on the trial of the issue the jury shall in behalf of the man accused, take into consideration any want of credibility in the mother of the bastard child, also any variation in her testimony before the justice and before the jury, and also any other confession of her, at any time, which does not agree with her testimony, or any other proofs or pleas made and produced on behalf of such accused person.

Judgment, bond, etc

SEC. 155. That in case the jury find the defendant guilty, or such accused person before the trial shall confess in court that the accusation is true, he shall be judged the reputed father of such child, and shall stand charged with the maintenance thereof, in such a sum or sums as the court may order and direct, with payment of costs of prosecution; and the court shall require the reputed father to give security to perform the aforesaid order, and in case the reputed father shall neglect or refuse to give security as aforesaid, and pay the costs of prosecution, he shall be committed to the jail of the county, there to remain until he shall comply with the order of the court: *Provided*, That such putative father confined in prison for not complying with the sentence and order of the court, as in this section provided, shall be entitled to the benefit of the prison rules, and of sections 390 and 391 of the "Criminal Practice Act," as to the same with which he is charged and the costs.

NOTE—Act of February 14, 1874

CHAPTER XII.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

Sec. 156. Inland bills and notes declared negotiable.
Sec. 157. Days of grace.
Sec. 158. Bills and notes falling due on certain days—payable when.
Sec. 159. Drawers of endorsed bills, when liable
Sec. 160. Endorsers of bills and notes contingently liable only.
Sec. 161. Presentment and protest necessary to hold endorsers.
Sec. 162. Holders of over-due bills and notes may sue all parties thereto; transfer to party tendering payment.

Negotiable obligations.

Sec. 156. Inland and foreign bills of exchange and promissory notes are hereby declared to be negotiable obligations in this territory, and collectable by and in the name of the holders and owners thereof.

Days of grace

Sec. 157. Three days of grace shall be deemed and taken to apply to all bills of exchange and promissory notes maturing within this territory; so that they shall not be deemed to fall due until the third day from and after the day of maturity expressed therein. But this provision shall not extend to drafts payable at sight, nor to checks for funds deposited in bank, or elsewhere, subject to draft at sight.

Bills and notes following due on holiday.

Sec. 158. Bills of exchange and promissory notes falling due on Sunday, the fourth day of July, Christmas, or any day set apart by the president of the United States, or the governor of this territory, as a day of public fasting or thanksgiving, shall be deemed to fall due the previous day; and may be prosecuted and prosected accordingly.

Liability of drawers and endorsers.

Sec. 159. Drawers of endorsed bills of exchange shall be primarily liable to the holders thereof until the same shall be accepted, after which, they shall be deemed only liable secondarily thereon. Endorsers for the drawers of such bills shall be liable as between the parties thereto, only for the default of the drawers, in the order of their endorsements thereon.

Coutingent liability.

Sec. 160. Endorsers of bills of exchange and promissory notes shall be contingently liable only until after they shall have been notified of the presentation and non-payment thereof, at maturity, by the person or persons primarily liable for their payment.

SEC. 161. In order to make the contingent liability of any endorser of any bill of exchange or promissory note absolute, it shall be necessary for the holders of the paper to cause it to be presented at the place where, by its terms, it is payable, if any place of payment be therein or thereon specified, and, if no place of payment be specified, then to the person himself who is primarily liable for the payment; and if payment thereof, on such presentation at maturity, be neglected or refused, to cause a written or printed, or partly written and partly printed notice of such presentation, demand, and non-payment, briefly describing the bill or note, to be served immediately thereafter upon the endorser, unless the same shall be protested in the usual manner by a notary public; in which case the official certificate of protest of such officer, made on the day of protest, enclosed in letter form, and deposited—post-paid—in the post-office, directed to such endorser at his usual place of residence, will charge him in the same manner.

Protest

SEC. 162. Holder of over-due bills of exchange and promissory notes may sue all the parties thereto collectively or severally, at his option, but if any of the parties thereto, who are not primarily liable for the payment, shall tender him the amount of principal, interest and costs thereon, he shall transfer the paper, and if a judgment be rendered thereon, he shall assign the judgment to such party so making the tender; and in case of refusal he may be compelled to do so by summary proceedings, for that purpose instituted, in the district court of the district in which he shall reside.

Who may be sued; transfer.

NOTE.—Act January 12, 1872

CHAPTER XIII.

BOARDS OF HEALTH.

Sec. 163. County commissioners of each county to appoint a licensed physician to be member of a board of health.

Sec. 164. The board of health to make rules and regulations for prevention of spread of contagious disease.

Sec. 165. Duties of practicing physicians.

Sec. 166. Board of health may declare quarantine and enforce the same.

Sec. 167. How expenses shall be paid.

13th ses. p. 46

Appointment of board of health: term of office.

Sec. 163. It shall be the duty of the commissioners of each county to appoint one intelligent person residing therein, who shall be a licensed physician, and the person so appointed, together with said board of county commissioners, shall constitute a county board of health for the county of their residence, and shall hold their office for the term of two years, and until successor shall be appointed. Any vacancy in said board, caused by the death or resignation of said physician, or the refusal of said physician to act as a member thereof, shall be filled by the board of county commissioners.

Sanitary regulations; violations

Sec. 164. Said county boards of health shall make and establish for their county, or any district or place therein, such sanitary rules and regulations as they may deem necessary and proper to prevent the outbreak and spread of contagious or infectious diseases; and any person failing or refusing to comply with or obey said rules and regulations of said board, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten nor more than one hundred dollars.

Infectious or contagious diseases to be reported.

Sec. 165. It shall be the duty of every practicing physician to report promptly to the county board of health of the county in which he resides all or any diseases of an infectious or contagious nature under treatment by him, and said board shall at once take the necessary precaution to prevent the spread of such contagious or infectious diseases.

Quarantine.

Sec. 166. The board of health of any county may declare quarantine therein, or in any particular district or place therein, against the introduction of any contagious or infectious disease prevailing in any other state, county or place, and of any and all persons and things liable to spread such contagion or infection. The said county board shall have power and authority to enforce such quarantine until the same is raised by themselves, and may confine any such affected person or persons liable to spread such contagion or infection to the house or premises in which he or she resides: or if such persons have no residence in the county, to a place to be provided by them for the purpose.

Expenses paid by county

Sec. 167. All necessary expenses incurred by the said county board of health in enforcing the provisions of this chapter shall be paid for out of the county treasury, from the general fund of the county.

Note.—Chapter XIII, act of March 3rd, 1883.

CHAPTER XIV.

MARKS AND BRANDS—TRADE MARKS

Sec. 168. Secretary of stock commissioners to be recorder.
Sec. 169. County clerk to keep auxiliary office.
Sec. 170. Duty of recorder and of applicant for a brand.
Sec. 171. To keep record in a book; to be open to inspection.
Sec. 172. List to be published; fees of recorder.
Sec. 173. Duties of clerks of auxiliary offices.
Sec. 174. Penalty for using like brand of another.
Sec. 175. Vendor of stock to vent his brand.
Sec. 176. Applicant for, to deliver recorder facsimile or description.
Sec. 177. Recorder to record same; exclusive right to.
Sec. 178. Penalty for issuing brand or mark of another person.
Sec. 179. Deceitfully using second-hand package with another's brand on it.
Sec. 180. Fee of recorder.
Sec. 181. Not to affect power of court or to prevent sale of brand.
Sec. 182. Limit to time in which to record.
Sec. 183. Fines to go to school fund.
Sec. 184. Treasurer to print 1,000 copies.
Sec. 185. To furnish county clerks, and to sell at one dollar per copy.
Sec. 186. Providing for payment for printing.
Sec. 187. Appropriation for engraving.
Sec. 188. Recorder not to record two like brands for same place on animal.
Sec. 189. Butchers to keep record of brands of slaughtered cattle, etc.
Sec. 190. To file one copy each in offices of justice of the peace and county clerk.
Sec. 191. Penalty for violation of these provisions.

SEC. 168. That a general office for recording brands, or marks and brands, shall be kept at the seat of government, and the duties are hereby devolved on the secretary of the board of stock commissioners.

Recorder of brands

NOTE —See note to section 172

Auxiliary office

SEC. 169. There shall also be an auxiliary office in every county other than that in which the general office is located; and the duties thereof are hereby devolved on the county clerks respectively.

Brand how recorded.

SEC. 170. Whenever any person wishes to obtain a recorded brand, or mark and brand, application may be made to the general recorder directly, or through the auxiliary office of the county in which the applicant resides; and it shall be the duty of the general recorder to designate the particular brand, or mark and brand, to be used by such applicant, and define the place and position it shall occupy on the animal; consulting always the choice and convenience of applicants, so far as may be, without interfering with previously recorded brands, or marks and brands.

Record of all brands to be kept

SEC. 171. The general recorder shall keep a record of all brands, or marks and brands, with the name and residence of the persons owning the same, in a book suitable for the purpose, which shall be free to the inspection of all persons interested; and he shall furnish to the owners certified copies of all brands, or marks and brands, which certificates shall be deemed evidence in law.

NOTE—Act January 10th, 1872.

Report and fees of recorder.

SEC. 172. The general recorder of brands and marks shall annually have published as an appendix to the report of the board of stock commissioners to the governor a list of all brands, or marks and brands, which have not been previously published, and cause the same to be printed and illustrated, and cause the appendix to be printed at his own expense a sufficient number of copies in pamphlet form to furnish each county clerk with one hundred copies thereof, for free distribution to those engaged in stock growing. The general recorder may charge and receive from each person recording a brand or mark and brand a fee of two dollars for each brand or mark and brand so recorded.

Duty of treasurer.

The territorial treasurer shall immediately after the approval of this act deliver to the secretary of the board of stock commissioners all books and papers in his possession and belonging to said office of general recorder of brands and marks.

NOTE—Section 168 and 172 are as amended by "An act to amend sections 106 and 110 of the fifth division of the Revised Statutes," approved March 9, 1887, and comprise all of said act except the introductory clause thereof, as follows: "Section 1. That sections 106 and 110 of the Revised Statutes be and the same are hereby amended to read as follows."

SEC. 173. Clerks of auxiliary offices shall receive and forward to the general recorder all applications for recording brands, or marks and brands, and shall furnish each applicant the recorder's certificate of the brand, or mark and brand, designated and recorded for him, for which service he may receive fifty cents each, in addition to the recorder's fee.

Applications to be forwarded

SEC. 174. Any person using a like brand, in the position or place recorded by another, shall be deemed guilty of a misdemeanor, and shall be liable to a fine in any sum not less than one hundred dollars for each offence.

Penalty for using another's brand

SEC. 175. It shall be, and it is hereby made the duty, of any and all persons who sell stock of any kind to another party to "vent" their brand on the part of the animal which the purchaser or purchasers may determine; *Provided*, That said "vent" brand shall be upon the same side of the animal as the original brand, either by inverting the original brand or by a "vent" brand prepared for the purpose; said "vent" brand may be, at least, one-half the size of the original; and said "vent" brand shall be of the type of the original brand; and the venting of said original brand shall be *prima facie* evidence of sale or transfer of said animal or animals.

Vent brands

NOTE—Act January 10th, 1872

SEC. 176. That any person, partnership, firm, or private corporation, desiring to secure within this territory the exclusive use of any name, mark, brand, print, designation, or description, for any article of manufacture or trade, or for any mill, hotel, factory, machine shop, or other business, shall deliver to the recorder of brands for the Territory of Montana, or cause to be delivered to him, a particular description or *fac-simile* of such brand, mark, name, print, designation or description, as he may desire to use.

Trade mark, etc.

SEC. 177. If there be not already a claim filed with the recorder of brands for the same or a similar name, mark, brand, print, designation or description, he shall immediately record the one furnished, in a book, to be specially provided and kept by him for that purpose, which book shall be at all times subject to public inspection and examination. And after the said record, the person or persons causing the same to have been recorded shall have the exclusive right to use the said name, mark, print, brand, designation or description. That the exclusive right herein granted

Trade mark to be recorded.

—41

shall only authorize the record of a mark, brand or particular device, and shall not authorize the exclusive use of figures, letters or roman numerals. If there be already filed the same or a similar brand, mark, name, print, designation or description, the recorder of brands shall so inform the applicant without delay, and shall not record the same.

Penalty for using another's trade mark.

SEC. 178. Any person, partnership, firm or corporation that shall use or cause to be used any brand, mark, name, print, designation or description, the same as, or similar to, one so secured or recorded, for the purpose of deception or profit, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars, and not more than one thousand dollars.

Same

SEC. 179. Any person, partnership, firm or private corporation, that shall use or cause to be used any second-hand sack, box, barrel, can, package or other article on which has been placed any name, brand, mark, print, designation or description, the property of another, for the purpose of deception, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars.

Fee of recorder.

SEC. 180. The fee of the recorder of brands shall be one dollar for recording each brand, mark, name, print, designation or description.

Construction.

SEC. 181. Nothing in this chapter shall be so construed as to affect the power of courts of equity or perpetually restrain, by injunction or otherwise, the improper use of any mark, brand, name, print, designation or description, or to prevent the sale or transfer of such mark, brand, name, print, designation or description, with the right to use the same.

Claims prior to July 1, 1874

SEC. 182. Persons now using brands or marks for any of the purposes aforesaid shall have until July 1, 1874, in which to file their claim thereto, before which date no claim to a new brand or mark shall be filed.

Fines.

SEC. 183. That all fines arising under the provisions of this chapter shall be paid into the county treasury of the county where the offence was committed, for the benefit of the school fund.

NOTE.—Act February 2, 1874, took effect July 1, 1874.

1000 copies of list of brands to be printed.

SEC. 184. After the first day of April, A. D. 1879, it shall be the duty of the territorial treasurer to cause to be printed, at the expense of the territory, one thousand copies of a complete list of all marks and brands of record in his office, arranged in alphabetical order, in pamphlet form, which may be on file in his office on the said first day of April, A. D. 1879.

Pamphlets furnished to county clerks.

SEC. 185. The treasurer, so soon as the said pamphlets shall be printed, shall furnish the county clerks of each county with fifty copies of the same. The county clerks shall receive said copies and sell the same to any person applying therefor at the rate of one dollar per copy, and account to and pay over to the said treasurer every three months, for the money received therefor. When any county clerk shall have sold and accounted for the first fifty copies furnished, he may apply to, and receive from the treasurer an additional fifty copies, until the whole of the thousand copies are exhausted.

Payment for printing brands, etc.

SEC. 186. The auditor shall draw his warrant upon the treasurer for the amount of the expenditure incurred by the printing, as herein provided for, upon receiving a bill from the party performing the work, duly certified as correct by the governor.

Engraved copies of brands

SEC. 187. The treasurer is hereby authorized to expend the sum of sixty dollars, or so much thereof as may be necessary, in procuring engraved copies of the brands placed on record for publication, and said copies shall remain the property of the territory, to be used in printing said marks and brands, and the auditor is authorized to issue his warrant for the amount so expended, not to exceed the sum of sixty dollars.

SEC. 188. The recorder of marks and brands shall not record any two like brands, if upon the same place on the animal.

NOTE—Act February 21st, 1879

Butcher to keep record marks and brands

SEC. 189. From and after the passage of this chapter it shall be the duty of all butchers slaughtering cattle in this territory to keep a true and correct record of all marks and brands of all cattle slaughtered by them, recording also the name or names of persons from whom the said cattle were bought, together with their residence and date of purchase and delivery of said cattle. The said record shall be kept in a suitable book, in the said butcher's place of business, subject at all times to the inspection of the public.

Butchers to make report

SEC. 190. It shall be the duty of all butchers keeping a record as provided in section 189 of this chapter, to make, or cause to be made, on or before the first day of each month, two exact and correct copies of the said record, as kept by him or them, and shall be and appear before the nearest acting justice of the peace or probate judge, as the case may be, within the county in which said butcher carries on and conducts his business, and shall make affidavit to the correctness of the said record, one copy of which shall be placed on file in the office of the nearest justice of the peace, and the other copy shall be sent by the said butcher to the county clerk in said county, and placed on file by the said clerk, and be subject, as other papers in his office, to the inspection of the public.

Penalty for violation

SEC. 191. Any person who shall violate any of the provisions of this chapter, or shall fail, neglect, or refuse to comply with the requirements thereof, shall be deemed guilty of a misdemeanor, and, on conviction thereof, in a court of competent jurisdiction, shall be punished by fine of not less than one hundred dollars and not exceeding five hundred dollars, or by imprisonment in the county jail not less than three months and not exceeding six months, at the discretion of the court. All money collected by virtue of the provisions of this chapter shall be paid into the general fund of the county for the benefit of the public schools in said county.

NOTE—Act of February 20, 1879

CHAPTER XV.

CLERKS AND DEPUTY CLERKS OF DISTRICT COURTS.

Sec. 192. Clerks of district and probate courts to give bonds.
Sec. 193. Bonds may be sued on in the name of the territory.
Sec. 194. Appointment and qualification of deputy clerk.
Sec. 195. Official oath of deputy.
Sec. 196. Duty of clerk to appoint a deputy for each county.
Sec. 197. Deputy to keep records at the county seat.
Sec. 198. Penalty for refusal to appoint deputy.

14th ses. p 55

Clerks of district and probate courts to give bonds.

SEC. 192. The clerks of the territorial district courts, and clerks of the probate courts, are hereby required to execute official bond, running to the people of the Territory of Montana, conditioned for the faithful performance of their duties as clerks of their respective courts, and to account for all moneys of litigants and others coming into their hands as such clerks. Each clerk of the district court, before entering upon the discharge of his duties as such, shall file with the secretary of the territory, a good and sufficient bond, conditioned as aforesaid, in the sum of twenty thousand dollars, with two or more sureties, to be approved by the judge of the district court of the district for which he is appointed; clerks of the probate court shall give bonds in the sum of five thousand dollars, with two or more sureties, to be approved by the judge of the probate court of the county for which they are appointed. Such bond shall be filed in the office of the county clerk of the county for which the clerk is appointed.

Suit upon bonds

SEC. 193. The bond so executed by said clerks may be sued upon in the name of the Territory of Montana, in any court of competent jurisdiction, to the use of any person or persons aggrieved by any breach of the same.

NOTE—Section 192 and 193, act of February 16th, 1885

Appointment of deputy clerk

SEC. 194. That the clerks of the district courts of the several counties within this territory may, with the approval of the judge of the district court, within their several judicial districts, appoint one or more deputies, which shall be evinced by a certificate thereof, signed by such clerk and approved by said judge, and entered upon the journals of their respective courts, which deputy shall continue during the pleasure of the principal, and every principal may take such bond and security from his deputy as he may deem necessary to secure the discharge of his duties; and the principal shall in all cases be answerable and liable for the neglect, default or misconduct in the office of his deputy.

Oath of deputy

SEC. 195. That every such deputy shall, previous to entering upon the duties of his appointment, take an oath faithfully to perform all the duties thereof, which oath shall be entered on the journal of said court, and when so qualified, said deputy may do and perform all the duties appertaining to the office of his principal.

NOTE.—Act of February 4th, 1874

Deputy for each county.

SEC. 196. It is hereby made the duty of the clerk of each judicial district of this territory to appoint a deputy clerk for each county of such judicial district, where courts are held outside of the county in which such clerk may reside, which deputy shall qualify and give bond as now provided by law.

Duty of deputy clerk.

SEC. 197. It shall be the duty of each deputy clerk of the district court to keep a full and complete record of the proceedings of such district court, in an office to be provided by the county commissioners, at the county seat of the county where such court may be held, in the form and manner provided by law for the keeping of such records and proceedings, which records and all other books and papers required by law to be kept in the office of the clerk of the district court, shall be open for the examination of any person during the usual business hours of each day, Sundays and legal holidays excepted.

Penalty if clerk fails to appoint deputy.

SEC. 198. Every clerk of the district court in this territory who shall fail or refuse to appoint a deputy clerk for each county, as herein provided, shall be deemed guilty of a misdemeanor, and be fined in any court of competent jurisdiction, in any sum not less than five hundred dollars nor more than one thousand dollars.

NOTE.—Act February 19, 1879

CHAPTER XVI.

COMMISSIONERS OF DEEDS.

Sec. 199. Governor may appoint commissioners of deeds.
Sec. 200. Oath and fee for commission.

Appointment of commissioner of deeds

SEC. 199. That the governor of this territory may appoint and commission in any state or territory of the United States, or Dominion of Canada, one or more commissioners of deeds, to continue in office during the pleasure of the governor, not exceeding the period of five years, who shall have power to administer oaths and take depositions, and the proof and acknowledgment of deeds and other instruments to be used or recorded in this territory.

Oath

SEC. 200. Before such commissioner shall proceed to discharge any of the duties of his said appointment, he shall take and subscribe an oath before some officer authorized to administer oaths in the state or territory for which he is appointed, that he will faithfully discharge the duties of his said appointment, which oath, together with an impression of his seal of office, shall be filed in the office of the governor of this territory; *Provided*, That no commission shall issue until the applicant pays into the territorial treasury the sum of three dollars.

Fee.

CHAPTER XVII.

COMMON LAW.

Sec 201. Common law adopted in this territory.

SEC. 201. That the common law of England, so far as the same is applicable and of a general nature, and not in conflict with special enactments of this territory, shall be the law and the rule of decision, and shall be considered as of full force until repealed by legislative authority.

Common law prevails when not in conflict with statute

NOTE—Act January 12th, 1872.

CHAPTER XVIII.

CONSTRUCTION STATUTES.

Sec. 202. All words to be construed according to approved and common usage, except technical.
Sec. 203. Repealing act, if repealed, not to revive former laws.
Sec. 204. All provisions to be liberally construed.
Sec. 205. Time not prescribed, to take effect after passage.
Sec. 206. Times "heretofore" and "hereafter," what to mean.
Sec. 207. Singular number and masculine gender—what to mean.
Sec. 208. Rules of last two sections,—when to apply.
Sec. 209. Prosecution not to be affected by repeal of law.
Sec. 210. What omitted in publishing laws.

SEC. 202. In the construction of all statutes the following rules shall be observed, unless such construction shall be manifestly inconsistent with the intent of the legislature, or repugnant to the context of the same statute, that is to say:

Rules for construction of statutes

First. All words and phrases shall be understood and construed according to the approved and common usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning, shall be construed and understood according to such peculiar and appropriate meaning.

Second. Every word imparting the singular number only, may extend and be applied to one person or thing, or to several persons or things, and every word imparting the masculine gender only, may extend and be applied to females as well as males; and when it says executor, it may mean executrix, and when it says administrator, it may mean administratrix.

Third. The words "insane person" shall be construed to include every idiot, *non compos*, lunatic, or distracted person.

Fourth. The word "issue," as applied to descent of estate, shall be construed to include all the lawful lineal descendants of the ancestor.

Fifth. The words "land or lands," and the words "real estate," shall be construed to include lands, tenements and hereditaments, and all rights thereto, and all interests therein.

Sixth. The word "month" shall be construed to mean a calendar month, and the word "year" a calendar year, unless otherwise expressed.

Seventh. The word "oath" shall be construed to include affirmation, and the word "sworn" to include affirmed.

Eighth. The word "person" may extend and be applied to bodies politic and corporate.

Ninth. The words "town or towns" may be construed to include city or cities.

Tenth. The word "will" shall be construed to mean codicil as well as will.

Eleventh. The words "written or writing" may be construed to include printing or engraving: *Provided*, That in all cases where the written signature of any person is required by law, it shall always mean the proper handwriting of such person, or, in case he is unable to write, his proper mark.

Twelfth. The word "state," when applied to different parts of the United States, may be construed to include the District of Columbia and the territories.

Thirteenth. The term "court" shall, in all necessary cases, be deemed to refer as well to probate judges and justices of the peace, as to courts of record.

Effect of repeal.

SEC. 203. No act or part of an act repealed by another act shall be deemed to be revived by the repeal of the repealing act.

Construction of general terms, etc.

SEC. 204. All general provisions, terms, phrases, and expressions, used in any statute, shall be liberally construed, in order that the true intent and meaning of the legislative assembly may be fully carried out.

When act takes effect

SEC. 205. Every act which does not fully prescribe the time when it shall go into operation shall take effect from and after its passage.

Meaning of "heretofore" and "hereafter."

SEC. 206. Whenever the term "heretofore" occurs in any statute, it shall be construed to mean any time previous to the day such statute shall take effect; and whenever the word "hereafter" occurs, it shall be construed to mean the time after the statute containing the term shall take effect.

Words of gender, number, etc

SEC. 207. When any subject, matter, party, or person is described or referred to, by words imparting the singular number, or the masculine gender, several matters, and persons and females, as well as males, and bodies corporate as well as individuals, shall be deemed to be included.

Application of rule.

SEC. 208. The rules prescribed in the last two sections shall apply in all cases, unless it be otherwise especially provided, or unless there be something in the subject or context repugnant to such construction.

Pending action not affected by repeal

SEC. 209. No action, plea, prosecution, civil or criminal, pending at the time any statutory provision shall be repealed, shall be affected by such repeal, but the same shall proceed in all respects as if such statutory provisions had not been repealed, except that all such proceedings had after the taking effect of any statute passed at this session shall be conducted according to the provisions of such statute, and shall be in all respects subject to the provisions thereof, so far as they are applicable.

What may be omitted in publishing laws

SEC. 210. In publishing the acts of the legislative assembly, the enacting clause, the signature of the speaker of the house of representatives, the president of the council, and the governor shall be omitted, but the date of their approval shall be retained.

NOTE—Act of Jan 12, 1872.

CHAPTER XIX.

CONTRACTS AND CONVEYANCES.

Sec. 211. Market value of gold dust to be measure of damages in certain actions.

Sec. 212. Every conveyance made with intent to defraud, void.

Sec. 213. No conveyance deemed fraudulent in favor of person having legal notice.

Sec. 214. Every conveyauce containing provision for revocation to be void as against subsequent purchaser.

Sec. 215. Power of revocation to other than grantor void.

Sec. 216. From what time power of revocation valid.

Sec. 217. All conveyances of land to be in writing.

Sec. 218. Preceding section not to affect will of testator.

Sec. 219. Every contract for sale or lease of lands or interest therein void, unless in writing.

Sec. 220. Instrument may be subscribed by agent.

Sec. 221. Nothing in this act to abridge power of court.

Sec. 222. All deeds and assignments in trust for benefit of party making same void.

Sec. 223. What agreements void, unless in writing.

Sec. 224. Contract for over two hundred dollars —when void, unless in writing.

Sec. 225. What deemed memorandum of sale at auction.

Sec. 226. Goods sold and not delivered conclusive evidence of fraud.

Sec. 227. What termed creditors.

Sec. 228. Every instrument may be subscribed by agent.

Sec. 229. Every conveyance or assignment made with intent to defraud creditors void.

Sec. 230. Void against creditors, also against heirs, etc.

Sec. 231. Fraudulent intent a question of fact.

Sec. 232. Not to affect innocent purchaser without notice.

Sec. 233. What terms "estate" and "bonds" to include.

Sec. 234. What the term "conveyance" to embrace.

Measure of damages in certain cases.

SEC. 211. That in actions on express contracts for the payment of a certain amount in gold dust, or gold or silver bullion, or for the delivery of a certain amount of gold dust, or gold or silver bullion, the measure of damages shall be the market value of the amount of gold dust, or gold or silver bullion, in United States treasury notes, at the time it should have been delivered or paid, with interest until the time of recovering judgment, at the rate stipulated in the contract.

NOTE—Act of January 12th, 1872

Conveyance to defraud creditors void

SEC. 212. Every conveyance of any estate or interest in lands, or the rents and profit of lands, and any charge upon lands, or upon the rents or profits thereof, made or executed with the intent to defraud prior subsequent purchasers for a valuable consideration of the same lands, rents, or profits, as against such purchasers, shall be void.

Effect of notice

SEC. 213. No such conveyance or charge shall be deemed fraudulent in favor of a subsequent purchaser who shall have legal notice thereof at the time of such purchase, unless it shall appear that the grantee in such conveyance, or person to be benefited by such charge. was privy to the fraud.

Conveyance revocable at will of grantor void

SEC. 214. Every conveyance or charge of or upon any estate or interest in lands containing any provision for revocation, determination, or alteration of such estate or interest, or any part thereof, at the will of the grantor, shall be void as against subsequent purchasers from said grantor for a valuable consideration, of any estate or interest so liable to be revoked, determined, or altered, although the same be not directly revoked, determined or altered, by such grantor by virtue of the power reserved or expressed in such prior conveyance or charge.

Effect of power to revoke.

SEC. 215. When a power to revoke a conveyance of lands, or rents and profits thereof, and to reconvey the same, shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents, and profits, to a purchaser for a valuable consideration, such subsequent conveyance shall be valid in the same manner and to the same extent as if the power of vacation were recited therein, and the intent to revoke the former conveyance expressly declared.

Same.

SEC. 216. If a conveyance to a purchaser under either of the two last preceding sections shall be made before the person making the same shall be entitled to execute his power of vacation, it shall nevertheless be valid from the time the power of vacation shall actually rest in such person in the same manner and to the same extent as if then made.

Certain estates created by deed

SEC. 217. No estate or interest in lands other than for leases for a term not exceeding one year, or any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered, or declared, unless by act or operation of law, or by deed or conveyance, in writing subscribed by the party creating, granting, assigning, surrendering, or declaring the same, or by his lawful agent thereunto authorized by writing.

Construction.

SEC. 218. The preceding section shall not be construed to affect in any manner the power of a testator in the disposition of his real estate by a last will and testament, nor prevent any trust arising or being extinguished by operation of law.

Contract for lease or sale void, when.

SEC. 219. Every contract for the leasing for a longer term than one year, or for the sale of any lands or interest in lands, shall be void, unless the contract, or some note or memorandum thereof expressing the consideration, be in writing, and be subscribed by the party by whom the lease or sale is to be made.

Agent may sign.

SEC. 220. Every instrument required to be subscribed by any person mentioned in the last preceding section may be subscribed by the agent of the party lawfully authorized.

Specific performance

SEC. 221. Nothing contained in this chapter shall be construed to abridge the power of the court to compel the specific performance of such agreements.

When deeds of gift, etc, void

SEC. 222. All deeds of gift, all conveyances and transfers, or assignments, verbal or written, of goods, chattels, or things in action, made in trust for the use of the person making the same, shall be void as against the creditors, existing or subsequent, of such person.

Certain agreements void, unless in writing

SEC. 223. In the following cases any agreement shall be void unless such agreement, or some note or memorandum thereof, expressing the consideration, be in writing, and subscribed by the party charged thereunto:

First. Every agreement that by the terms is not to be performed within one year from the making thereof.

Second. Every special promise to answer for the debt or default or miscarriage of another.

Third. Every agreement, promise, or undertaking, made upon consideration of marriage, except mutual promise to marry.

Same.

SEC. 224. Every contract for the sale of any goods, chattels, or things in action, for the price of two hundred dollars and over shall be void, unless

First. A note or memorandum of such contract be made in writing, and be subscribed by the parties to be charged therewith; or

Second. Unless they shall accept or receive a part of such goods or the evidences or some of them of such in action.

Third. Or unless the buyer shall at any time pay some part of the purchase money.

Duty of auctioneer.

SEC. 225. Whenever goods shall be sold at auction, and the auctioneer shall at the time of the sale enter in a sale book a memorandum specifying the nature and price of the property sold, the term of sale, the names of the purchasers, and name of the person on whose account the sale is made, such memorandum shall be deemed a note of the contract of sale within the meaning of the last section.

When sale of personal property void.

SEC. 226. Every sale made by a vendor of goods and chattels in his possession or under his control, and every assignment of goods and chattels, unless the same be accompanied by the immediate delivery, and be followed by an actual and continued change of possession of the thing sold and assigned, shall be conclusive evidence of fraud as against the creditors of the vendor or the person making such assignments, or subsequent purchasers in good faith.

Meaning of term "creditors"

SEC. 227. The term creditors, as used in the last section, shall be construed to include all persons who shall be creditors of the vendor or assignor at any time while such goods and chattels shall remain in his possession or under his control.

Agent may sign

SEC. 228. Every instrument of writing required by any of the provisions of this chapter to be subscribed by any party, may be subscribed by the lawful agent of such party.

Conveyance with intent to defraud void

SEC. 229. Every conveyance or assigement, in writing or otherwise, of any estate or interest in lands or in goods in action, or of the rents or profits thereof, made with the intent to hinder, delay, or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts or demands, and any bond or other evidences of debt given, suits commenced, decrees or judgment suffered, with the like intent as against the person hindered, delayed, or defrauded, shall be void.

What void against heirs, etc.

SEC. 230. Every conveyance, charge, instrument or proceeding, declared to be void by the provisions of this chapter, as against creditors or purchasers, shall be equally void as against the heirs, successors, and personal representatives or assigns of such creditors or purchasers.

Intent a question of fact

SEC. 231. The question of fraudulent intent in all cases arising under this article shall be deemed a question of fact and not of law, nor shall any conveyance or charge be adjudged fraudulent as against creditors or purchasers solely on the ground that it was not founded on a valuable consideration.

Purchaser without notice

SEC. 232. The provisions of this chapter shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor or of the fraud rendering void the title of such grantor.

Meaning of "lands", "estate" and "interest in lands"

SEC. 233. The term "lands," as used in this chapter, shall be construed as co-extensive in meaning with land, tenements, hereditaments, and possessory land claims to public lands; and the terms "estate" and "interest in lands" shall be construed to embrace every estate and interest, present and future, vested and contingent in lands as above defined.

Meaning of conveyance

SEC. 234. The term "conveyance," as used in this chapter, shall be construed to embrace any instrument in writing except a last will and testament, whatever may be its form and by whatever name it may be known in law, by which any estate or interest in land is created, alienated, assigned or surrendered.

NOTE—Act of Jan. 12, 1872

CHAPTER XX.

CONVEYANCE OF REALTY.

Sec. 235. How conveyance by deed signed and acknowledged.
Sec. 236. Husband and wife may convey by joint deed.
Sec. 237. Every conveyance to be proved or acknowledged.
Sec. 238. By whom acknowledgment taken.
Sec. 239. By whom foreign acknowledgments taken.
Sec. 240. Officer taking proof or acknowledgment to certify same.
Sec. 241. Person must be known to officer.
Sec. 242. What certificate shall state.
Sec. 243. Form of certificate.
Sec. 244. Form when grantor not known.
Sec. 245. What proof of execution necessary.
Sec. 246. When proof of subscribing witness taken.
Sec. 247. When certificate of proof granted.
Sec. 248. What certificate is set forth.
Sec. 249. When evidence of handwriting taken.
Sec. 250. What proof of handwriting necessary.
Sec. 251. When officer may issue subpœna for witness.

Sec. 252. Person refusing to appear liable for damages.

Sec. 253. Certificate entitles deed to be recorded.

Sec. 254. How married women may convey estate.

Sec. 255. Who may take acknowledgment of married women.

Sec. 256. Married women to be personally known to officer; to be made acquainted with contents, etc.

Sec. 257. What certificate to contain.

Sec. 258. Every conveyance to be recorded; to be notice to third persons.

Sec. 259. Filing same for record to be notice.

Sec. 260. Unrecorded deeds void as against those recorded.

Sec. 261. Power of attorney to be acknowledged and recorded.

Sec. 262. Not considered revoked until recorded.

Sec. 263. Recorded conveyance may be read in evidence without proof.

Sec. 264. When deed lost record may be used in evidence.

Sec. 265. Record not to be conclusive proof.

Sec. 266. Record of deed proved by incompetent witness not evidence.

Sec. 267. Person conveying real estate without title, afterwards acquiring, title to vest in grantee.

Sec. 268. Persons out of possession may convey real estate.

Sec. 269. What term "real estate" to embrace.

Sec. 270. What the term "conveyance" to embrace.

Sec. 271. How satisfaction of mortgage entered.

Sec. 272. Mortgage to be satisfied on record when certificate presented.

Sec. 273. Certificate to be recorded.

Sec. 274. Mortgage liable for not having satisfaction of mortgage entered.

Sec. 275. Conveyances heretofore made to be recorded as provided in this act.

Sec. 276. Legality of instruments heretofore made not affected by this act.

Sec. 277. Grant to two or more persons to hold in common.

Sec. 278. Term "heirs" not necessary to convey fee simple.

Sec. 279.	*"Heirs" mentioned in remainder construed to mean those living at death of ancestor.*
Sec. 280.	*Future estate to be defeated by birth of posthumous child.*
Sec. 281.	*No present estate necessary to support contingent remainder.*
Sec. 282.	*Grants of rent or remainder good without attornment.*
Sec. 283.	*Attornment of tenant to stranger void*
Sec. 284.	*Lineal and collateral warrantees abolished.*
Sec. 285.	*Construction of terms "grant," "bargain" and "sale."*
Sec. 286.	*All instruments recorded to be notice after passage of this act.*
Sec. 287.	*When wife lives out of territory she need not sign deed.*

Conveyances to be signed and acknowledged.

SEC. 235. Conveyances of land, or of any estate or interest therein, may be made by deed signed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved and recorded as hereinafter directed.

Wife's deed

SEC. 236. A husband and wife may, by their joint deed, convey the real estate of the wife in like manner as she might do by her separate deed if she were unmarried.

Acknowledgment.

SEC. 237. Every conveyance in writing whereby any real estate is conveyed, or may be affected, shall be acknowledged or proved and certified in the manner hereinafter provided.

Proof of acknowledgment

SEC. 238. The proof of acknowledgment of every conveyance affecting real estate shall be taken by some one of the following officers:

If taken in Montana.

First. If acknowledged or proved within this territory, by some judge or clerk of a court having a seal, or by some notary public or some justice of the peace within this territory, and the certificate of such acknowledgment or proof shall be under the hand of such judge or clerk and the seal of such court, or under the hand of such justice of the peace; and if the property affected by such conveyance is not in the county for which such justice is an officer, the official character of such justice shall be certified to under the hand and official seal of the county clerk of the county within and for which such justice may be elected or acting.

Second. If acknowledged or proved without this territory and within the United States, by some judge or clerk of any court of the United States, or of any state or territory having a seal, or by a notary public or a justice of the peace, or by any commissioner appointed by the governor of this territory for that purpose, and the certificate of such acknowledgment or proof shall be under the hand of such judge or clerk and the seal of such court, or under the hand of such notary public or commissioner and his official seal, or under the hand of such justice of the peace; and in all cases the official character of such justice shall be certified under the seal of the court, tribunal, or officer within and for the county in which such justice of the peace may be acting which has cognizance of the official character of such justice.

If taken without Montana but within United States.

SEC. 239. The proof of acknowledgment of every power of attorney, or conveyance affecting real estate within the Territory of Montana, made and executed without the jurisdiction of the United States, shall be taken by some one of the following officers, to-wit: a notary public, or United States consul of any state, province, republic, kingdom or empire, and when so taken and acknowledged before either of said officers and by them certified under their seal of office, shall be entitled to be recorded in any county in which any real estate may be situate effected by such power of attorney or conveyance. Such certificate shall be substantially in the following form, to-wit:

12th ses. p. 1.

If taken in foreign country.

.... }
.... } ss.

On this.........day of.........A. D........ personally appeared before me, a notary public (or consul of the United States, as the case may be) in and for............, A. B., personally known to me to be the person described in, and who executed the foregoing instrument, and who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

NOTE —Section 239 act of Feb. 18, 1881.

SEC. 240. Every officer who shall take the proof or acknowledgment of any conveyance affecting any real estate shall grant a certificate thereof and cause such certificate to be endorsed or annexed to such conveyance. Such certificate shall be, when granted by any judge or clerk, under the hand of such judge or clerk,

Certificate of acknowledgment

and the seal of the court, when granted by any officer who has a seal of office, under the hand and official seal of such officer.

Persons must be known to officer.

SEC. 241. No acknowledgment of any conveyance whereby any real estate is conveyed or may be affected shall be taken, unless the person offering to make such acknowledgment shall be personally known to the officer taking the same to be the person whose name is subscribed to such conveyance, as a party thereto, or shall be proved to be such by oath or affirmation of a credible witness.

Contents of certificate

SEC. 242. The certificate of acknowledgment shall state the fact of acknowledgment, and that the person making the same was personally known to the officer granting the certificate to be the person whose name is subscribed to the conveyance as a party thereto, or was proved to be such by the oath or affirmation of a credible witness, whose name shall be inserted in the certificate.

SEC. 243. Such certificate shall be substantially in the following form, to wit:

Form of certificate.

TERRITORY OF MONTANA, }
County of......, } *ss.*

On this....day of........, A. D. 18—, personally appeared before me, a notary public (judge, or other officer, as the case may be), in and for said county, A. B., personally known to me to be the person described in, and who executed the foregoing instrument, and who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

SEC. 244. When the grantor is unknown to the judge or other officer taking the acknowledgment, the certificate may be in the following form to wit:

Form for unknown grantor.

TERRITORY OF MONTANA, }
County of......, } *ss.*

On this..day of........, A. D. 18...., personally appeared before me, a notary public (judge, or other officer) in and for said county, A. B., satisfactorily proved to me to be the person described in, and who executed the within conveyance, by the oath of C. D., a competent and credible witness, for that purpose by me duly sworn, and he, the said A. B., acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

Proof of execution

SEC. 245. The proof of the execution of any conveyance whereby any real estate is conveyed or affected shall be: First. By the testimony of a subscribing witness; or (second, when all the subscribing witnesses are dead, or) cannot be had, by evidence of the handwriting of the party and at least one subscribing witness.

Proof of subscribing witness.

SEC. 246. No proof of a subscribing witness shall be taken unless such witness shall be personally known to the officer taking the proof, to be the person whose name is subscribed to the conveyance as witness thereto, or shall be proved to be such by the oath or affirmation of a credible person.

Certificate of proof.

SEC. 247. No certificate of such proof shall be granted unless such subscribing witness shall prove that the person whose name is subscribed thereto as a party is the person described in and who executed the same, that such person executed the conveyance, and that such witness subscribed his name thereto as a witness thereof.

Same

SEC. 248. The certificate of such proof shall set forth the following matters:

First. The fact that such subscribing witness was known to the officer granting the certificate to be the person whose name is subscribed to such conveyance as a witness thereto, or was proved to be such by oath, or affirmation of a witness, whose name shall be inserted in the certificate.

Second. The proof given by such witness of the execution of such conveyance, and of the facts that the person whose name is subscribed to such conveyance as a party thereto, is the person who executed the same, and that such witness subscribed his name to such conveyance as a witness thereof.

Proof of handwriting.

SEC. 249. No proof of evidence of the handwriting of the party and of a subscribing witness shall be taken, unless the officer taking the same shall be satisfied that all the subscribing witnesses to such conveyance are dead, or can not be had to prove the execution thereof.

Same

SEC. 250. No certificate of such proof shall be granted, unless a competent and credible witness shall state, on oath or affirmation, that he personally knew the person whose name is subscribed thereto as a party, well knew his signature (stating his means of knowledge) and believes the name of the person subscribed thereto as a party was subscribed by such person, nor unless a competent and credible witness shall in like manner state that he personally knew the person whose name is subscribed to such conveyance as a witness, well knew his signature (and stating his means of knowledge) and believes the name subscribed thereto as a witness was thereto subscribed by such person.

Witness to execution may be compelled to testify.

Sec 251. Upon the application of any grantee in any conveyance required by this act to be recorded, or by any person claiming under such grantee, verified under the oath of the applicant, that any witness to such conveyance, residing in the county where such application is made, refuses to appear and testify touching the execution thereof, and that such conveyance can not be proved without his evidence, any officer authorized to take the acknowledgment for proof of such conveyance, may issue a subpœna requiring such witness to appear before such officer and testify touching the execution thereof.

Penalty for refusal to testify.

Sec. 252. Every person, who being served with a subpœna, shall, without reasonable cause, refuse or neglect to appear, or, appearing, shall refuse to answer upon oath touching the matter aforesaid, shall be liable to the party injured in the sum of one hundred dollars, and for such damages as may be sustained by him on account of such neglect or refusal, and may also be committed to prison by the judge of some court of record, there to remain without bail until he shall submit to answer, upon oath, as aforesaid; but no person shall be required to attend who resides out of the county in which the proof is taken, unless his reasonable expenses be first tendered.

Record

Sec. 253. A certificate of the acknowledgment of any conveyance, or the proof of the execution thereof, as provided in this act, signed by the officer taking the same, and under the seal of the officer, shall entitle such conveyance, with the certificate or certificates as aforesaid, to be recorded in the office of the recorder of any county in this territory.

Conveyance by married woman.

Sec. 254. A married woman may convey any of her real estate by any conveyance thereof, executed and acknowledged by herself and by her husband, and certified in the manner hereinafter provided by the proper officer taking the acknowledgment.

Acknowledgment of married woman

Sec. 255. Any officer authorized by this chapter to take the proof or acknowledgment of any conveyance whereby any real estate is conveyed or may be affected, may take and certify the acknowledgment of a married woman to such conveyance of real estate.

SEC. 256. No such acknowledgment shall be taken unless such married woman shall be personally known to the officer taking the same to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by a credible witness, nor unless such married woman shall be made acquainted with the contents of such conveyance, and shall acknowledge, on examination apart from and without the hearing of her husband, that she does not wish to retract the execution of the same.

Shall be known or proved to officer

SEC. 257. The certificate shall be in the form heretofore given, and shall set forth that such married woman was personally known to the officer granting the same to be the person whose name is subscribed to such conveyance as a party thereto, or was proved to be such by a credible witness, whose name shall be inserted in the certificate, and that she was made acquainted with the contents of such conveyance, and acknowledged, on examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion, or under influence of her husband, and that she does not wish to retract the execution of the same. Every certificate which substantially conforms to the requirements of this article shall be valid.

Form of certificate

SEC. 258. Every conveyance of real estate, and every instrument of writing setting forth an agreement to convey any real estate, may be effected, proved, acknowledged, and certified in the manner prescribed in this act to operate as notice to third persons, shall be recorded in the office of the recorder of the county in which such real estate is situated, but shall be valid and binding between the parties thereto without such record.

Notice

SEC. 259. Every such conveyance and instrument in writing, acknowledged or proved and certified and recorded in the manner prescribed in this chapter, from the time of filing the same with the recorder for record, shall impart notice to all persons of the contents thereof, and subsequent purchasers and mortgagees shall be deemed to purchase and take with notice.

Same

SEC. 260. Every conveyance of real estate within this territory hereafter made, which shall not be recorded as provided for in this chapter, shall be deemed void as against any subsequent purchaser in good faith and for a valuable consideration of the same real estate, or any portion thereof, where his own conveyance shall be first duly recorded.

When void against susbequent purchaser

Power of attorney, etc.

SEC. 261. Every power of attorney, or other instrument in writing, containing the power to convey any real estate as agent or attorney for the owner thereof, or to execute as agent or attorney for another any conveyance whereby any real estate is conveyed or may be effected, shall be acknowledged or proved, and certified and recorded as other conveyances whereby any real estate is conveyed or affected, are required to be acknowledged or proved, and certified and recorded.

Revocation

SEC 262. No such power of attorney, or other instrument, certified and recorded in the manner prescribed in the preceding section, shall be deemed to be revoked by any act of the party by whom it was executed until the instrument containing such revocation shall be deposited for record in the same office in which the instrument containing the power is recorded

Evidence

SEC. 263. Every conveyance, or other instrument conveying or affecting real estate, which shall be acknowledged or proved and certified as hereinafter prescribed, may, together with the certificate of acknowledgment or proof, be read in evidence without further proof.

Proof of lost instrument.

SEC. 264. When any such conveyance or instrument is acknowledged or proved, certified and and recorded in the manner hereinafter prescribed, and it shall be shown to the court that such conveyance or instrument is lost, or not within the power of the party wishing to use the same, the record thereof, or the transcript of such record, certified by the recorder under the seal of his office, may be read in evidence without further proof.

Evidence not conclusive

SEC. 265. Neither the certificate of the acknowledgment, nor of the proof of any such conveyance or instrument, nor the record, nor the transcript of the record of such conveyance or instrument, shall be conclusive, but the same may be rebutted.

If witness incompetent, other proof required.

SEC. 266. If the party contesting the proof of any such conveyance or instrument shall make it appear that any such proof was taken upon the oath of an incompetent witness, neither such conveyance or instrument, nor the record thereof, shall be received on evidence until established by other competent proof.

After acquired title.

SEC. 267. If any person convey any real estate by conveyance purporting to convey the same in fee simple absolute, and shall not, at the time of such conveyance, have the legal estate in such real estate, but shall afterwards acquire the same, the legal estate subsequently acquired shall immediately pass to the grantee, and such conveyance shall be valid as if such legal estate had been in the grantor at the time of the conveyance.

Sale in case of adverse possession.

SEC. 268. Any person claiming the title to any real estate may, notwithstanding there may be an adverse possession thereof, sell and convey his interest therein in the manner and with the same effect as if he was in actual possession of the same.

Meaning of term "real estate"

SEC. 269. The term real estate, as used in this chapter, shall be construed as co-extensive in meaning with lands, tenements, hereditaments, and possessory titles to public lands in this territory.

Meaning of "conveyance."

SEC. 270. The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing by which any real estate, or interest in real estate, is created, alienated, mortgaged, or assigned, except wills, leases for a term not exceeding one year, and executory contracts for the sale or purchase of lands.

Satisfaction of mortgage.

SEC. 271. Any mortgage that has been or may be hereafter recorded may be discharged by an entry in the margin of the record thereof, signed by the mortgagee or his personal representative or assignee, acknowledging the satisfaction of the mortgage in the presence of the recorder or his deputy, who shall subscribe the same as a witness. Such entry shall have the same effect as a deed of release duly acknowledged and recorded.

Same

SEC. 272. Any mortgage shall also be discharged upon the record thereof, by the recorder in whose custody it shall be, whenever there shall be presented to him a certificate executed by the mortgagee, his personal representative or assignee, acknowledged or proved and certified as herein before prescribed to entitle a conveyance to be recorded, specifying that such mortgage has been paid or otherwise satisfied or discharged.

Record of satisfaction.

SEC. 273. Every such certificate, and the proof and acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book containing such record in the minutes of the discharge of such mortgage made by the recorder upon the margin of the record thereof.

Penalty if mortgagee refuse to execute satisfaction.

SEC. 274. Any mortgagee, or his personal representative, or assignee, as the case may be, after the full performance of the conditions of the mortgage, whether before or after a breach thereof, who shall, for the space of seven days after being thereto requested, refuse or neglect to execute and acknowledge a certificate of discharge or release thereto, shall be liable to the mortgagor, his heirs or assigns, in the sum of one hundred dollars, and also for all actual damages occasioned by such neglect or refusal.

Conveyances heretofore made

SEC. 275. All conveyances of real estate heretofore made and acknowledged or proved according to the laws in force at the time of such making and acknowledgment of proof, shall have the same force as evidence, and be recorded in the same manner and with the like effect as conveyances executed and acknowledged in pursuance of this chapter.

Same.

SEC. 276. The legality of the execution, acknowledgment, proof from or record of any conveyance or other instrument heretofore made, executed, acknowledged, proved, or recorded, shall not be affected by anything contained in this chapter, but shall depend for its validity and legality upon the laws then existing and in force.

Tenancy in common.

SEC. 277. Every interest in real estate granted or devised to two or more persons, other than executors or trustees, as such shall be a tenancy in common, unless expressly declared in the grant or devise to be otherwise.

Term "heirs" not necessary to pass fee-simple

SEC. 278. The term "heirs," or other words of inheritance, shall not be necessary to create or convey an estate in fee simple, and every conveyance of any real estate hereafter executed shall pass all the estate of the grantor, unless the intent to pass a less estate shall appear by express terms or be necessarily implied in the terms of the grant.

Remainders

SEC. 279. When a remainder in lands or tenements, goods or chattels, shall be limited by deed or otherwise, to take effect on the death of any person without heir or heirs of his or her body, or without issue, the word "heir" or "issue" shall be construed to mean heirs or issue living at the death of the person named as ancestor.

Future estate, how defeated.

SEC. 280. A future estate, depending on the contingency of the death of any person without heirs or issue or children, shall be defeated by the birth of a posthumous child of such person capable of taking a descent.

Estate limited in remainder.

SEC. 281. When an estate shall, by any conveyance, be limited in remainder to the son or daughter or issue, or to the use of the son or daughter or issue, to be begotten, such son or daughter or issue, born after the decease of his or her father, shall take the estate in the same proportion and in the same manner as if he or she had been born in the lifetime of the father, although no estate shall have been created or conveyed to support the contingent remainder after his death.

Grant of rents

SEC. 282. Grants of rents, or of reversions or remainders, shall be good and effectual without attornment of the tenants, but no tenant who, before the notice of the grant, shall have paid rent to the grantor shall suffer any damage thereby.

Attornment to stranger.

SEC. 283. The attornment of a tenant to a stranger shall be void unless it be with the consent of the landlord of such tenant, or in pursuance to, or in consequence of, a judgment or decree of some court of competent jurisdiction.

Certain warranties abolished

SEC. 284. Lineal or collateral warranters, with all their incidents, are abolished, but the heirs and devisees of every person who shall have made any covenant or agreement in reference to the title of, in, or to any real estate, shall be answerable upon such covenant or agreement to the extent of the land descended or devised to them in the case and in the manner prescribed by law.

Force of words "grant" "bargain" and "sell"

SEC. 285. The words "grant," "bargain" and "sell," in all conveyances hereafter made, in and by which any estate or inheritance, possessory title or fee simple is to be passed, shall, unless restrained by express terms contained in such conveyance, be construed to be the following express covenants, and none other, on the part of the grantor, for himself, his heirs and assigns, to the grantee, his heirs and assigns:

First. That previous to the time of the execution of such conveyance the grantor has not conveyed the same real estate, or any right, title, or interest therein, to any person other than the grantee.

Second. That such real estate is, at the time of the execution of such conveyance free from incumbrances, done, made, or suffered by the grantor or any person claiming under him; and such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

Instruments of writing

SEC. 286. All instruments of writing mentioned in this chapter, now copied in the proper books of record, of the several counties of this territory, acknowledged and recorded in accordance with the laws now in force and effect at the time such instruments are so acknowledged and recorded, shall, after the passage of this chapter, be deemed to impart to subsequent purchasers and incumbrances, and all other persons whomsoever, notice of all such deeds, mortgages power of attorney, or other instrument, so far as to the extent the same may be found recorded, copied or noted in the books of record.

Absent wife need not sign deed.

SEC. 287. That any citizen, by deed, mortgage, or other conveyance, conveying property situated in this territory, who has a wife living in any other state or territory, can convey the full title to such property by his own signature, and the want of the signature of the said wife shall in no wise invalidate said conveyance.

NOTE.—Act January 12th, 1872, except when otherwise noted

CHAPTER XXI.

PENITENTIARY AND CONVICTS.

Sec. 288. Governor may contract with the United States authorities for keeping convicts.
Sec. 289. Convicts to be kept in penitentiary.
Sec. 290. The account of the warden.
Sec. 291. Governor may contract with the authorities of any state or territory for keeping prisoners.
Sec. 292. Convicts sentenced for two years or over to be sentenced to penitentiary in the state or territory for which contract is made.
Sec. 293. Governor to report to territorial auditor the amount due for keeping prisoners.
Sec. 294. Governor may employ persons to transport convicts.
Sec. 295. Governor to notify judges of district courts.
Sec. 296. Penitentiary of the state or territory with which contract is made to be deemed the territorial penitentiary.
Sec. 297. Governor authorized to renew or enter into new contracts.
Sec. 298. Sale of warrants to pay for maintenance of convicts.
Sec. 299. Contract for labor of convicts.
Sec. 300. Contractors not to remove convicts outside the penitentiary enclosure. Penalty.

Sec. 301. Clothing furnished destitute convicts when discharged.
Sec. 302. Maintenance defined.
Sec. 303. Governor may contract for the keeping of territorial convicts in county jails.
Sec. 304. The judges of the district courts may designate the jail in which convicts shall be confined.
Sec. 305. Laws applicable to the penitentiary extended to jails in which territorial convicts are confined.
Sec. 306 Governor to appoint medical inspector for penitentiary and insane asylum.
Sec. 307. Compensation for inspector.
Sec. 308. Deduction from time of sentence for good behavior.
Sec. 309. Forfeiture of good time for bad behavior.
Sec. 310. Several sentences construed as one.
Sec 311. Construction as to convicts already imprisoned.
Sec. 312. Trial of convict's sanity and removal to asylum.
Sec. 313. On restoration to sanity to be returned to penitentiary.
Sec. 314. Officers' fees.

13th ses p. 91.

Governor may contract with U S. for keeping convicts

SEC. 288. The governor of the territory is authorized and empowered to make, enter into and execute, on behalf of and in the name of the territory, upon the best terms that can be obtained, contracts with the authorities of the United States for the keeping, clothing and maintenance, in the United States penitentiary at Deer Lodge, of all persons sentenced to confinement in the territorial penitentiary for offences against the laws of this territory: *Provided*, That the amount contracted to be paid by the territory shall not exceed the sum of one dollar per day for keeping, clothing and maintaining each convict.

NOTE —Section 288, Act of February 23, 1883

Confinement of convicts.

SEC. 289. All persons sentenced to imprisonment in the penitentiary under the laws of this territory shall be confined in the United States penitentiary at Deer Lodge, in pursuance of the contract to be made as above provided.

Accounts to be made out and if correct paid.

SEC. 290. It shall be the duty of the warden, or the officer of the United States in charge of the penitentiary, to make out and deliver to the governor an account of the money due from the territory, specifying the name of each territorial prisoner, and the length of time the territory is charged for such prisoner, and shall certify that such amount is correct, and that the prisoners charged for have been kept in the penitentiary during all the time charged for them respectively, which account shall be examined by the governor, and, if he is satisfied that the same is correct, he shall so certify, and, upon presentation to and filing with the territorial auditor of such account and certificate, said auditor shall proceed to provide for the payment of said account as provided in section 298 of this chapter.

14th ses. p. 57

Governor may make contract with other state, etc

SEC. 291. The governor is authorized and directed to enter into, make and execute, in behalf of and in the name of the territory, upon such terms as he shall deem best, a contract with the proper authorities of any state or territory, for the safe keeping, clothing, medicines, medical treatment and care and maintenance, in the penitentiary of such state, for a term not exceeding three years, of all persons sentenced for a period of two or more years to confinement in the penitentiary for offenses against the laws of the territory: *Provided*, That the amount contracted to be paid by the territory shall not exceed fifty cents per day for the safe keeping, clothing and maintenance of each convict; and he may renew the contract on terms alike advantageous to the territory for a further period of three years, unless otherwise provided by law.

Where certain convicts to be confined

SEC. 292. All persons heretofore sentenced, or that may hereafter be sentenced, to imprisonment in the penitentiary for a period of two or more years, shall be confined in the penitentiary of that state or territory with which the governor may contract for the safe keeping and maintenance of the same; and there shall be added to all sentences of confinement in the penitentiary the additional penalty of hard labor.

Payment of contract price.

SEC. 293. It shall be the duty of the governor to report to the territorial auditor at such stated periods as are provided in the contract he may make for the keeping of said convicts, the amount due from the territory, specifying the names of the convicts, and the length of time the territory is charged for each respectively, and the territorial auditor is hereby authorized to draw his warrant on the territorial treasurer, in the name of the proper officer of the prison, for the amount found due on said report.

Competent person to transport convicts.

SEC. 294. The governor is authorized to employ some competent person or persons to take charge of such convicts as are now or may hereafter be sentenced to confinement in the penitentiary for the period of two or more years, and safely transport said convicts to the penitentiary of the state or territory that has contracted for the safe keeping and maintenance of the same; and the said person or persons shall receive for such services his actual, reasonable and necessary expenses, and a per diem of not exceeding four dollars while necessarily employed in such duty, which amount or amounts shall be ascertained by the governor, verified by the oath of the person or persons performing such service, and to be paid out of the territorial treasury on his order and the warrant of the territorial auditor.

14th ses. p 58

Duty of judges

SEC. 295. After such contract has been made by the governor, he shall give notice to the judges of the district courts of the same, and after such notice all persons sentenced to imprisonment in the penitentiary for a period of two or more years shall be sentenced to be confined in the penitentiary of the state or territory that contracts with the territory for the keeping and maintenance of the same.

Penitentiary contracting to be taken as territorial prison.

SEC. 296. The penitentiary of the state or territory that contracts for the keeping of territorial prisoners shall be taken and held in law to be the territorial penitentiary for the confinement of prisoners who are now or may hereafter be sentenced to confinement in the penitentiary for the period of two years, or more, and such prisoners shall be subject to all the rules and regulations adopted and enforced for the government of said penitentiary.

New contracts authorized

SEC. 297. If any contract made by the governor with any state or states or territory shall expire by limitation of the contract, or otherwise become inoperative, he is hereby authorized to enter into a contract with some other state or states or territory, subject to the terms and limitations of this chapter.

NOTE.—Sections 291 to 297 inclusive, act of March 10th, 1885.

Auditor to issue warrants for expense of convicts

SEC. 298. The territorial auditor is hereby required to issue territorial warrants for such amounts as may be necessary to pay for the maintenace, clothing, and keeping, and in case of death, the necessary expenses of burial of such convicts, and the governor and auditor are authorized and required to sell the same at the highest price that can be obtained therefor, and apply the proceeds of such sale to the payment of all sums due, or that may become due, the United States under the provisions of this chapter; *Provided,* It shall be the duty of the territorial auditor, previous to selling said territorial warrants, to cause to be published in a newspaper published at the seat of the government of this territory, at least four consecutive weeks before such sale, a notice thereof specifying the amounts of warrants to be sold, and the time and place of such sale.

Contract for hire of convicts.

SEC. 299. The governor is hereby authorized to make such contract as he shall think advantageous to the territory, for the hire or labor of the territorial convicts for the period of not exceeding two years, and to apply the proceeds of the labor of such prisoners in payment of the amount due the United States for the keeping, clothing, and maintenance of such prisoners; *Provided*, That the governor may make provision in such contract that the warden, or other officer of the United States having charge and control of said territorial prison, may retain not to exceed 30 per cent. of such proceeds, as compensation for his services in keeping, and rendering accounts of such labor, and accounting to the treasurer therefor.

13th ses p 106

Convicts not to be removed from enclosure.

SEC. 300. It shall be unlawful for the warden, or any other person in charge of convicts in the territorial penitentiary, or any contractor or other person entitled to the labor of said convicts, to take or remove any such convicts outside of the enclosures of such penitentiary for the purpose of working said convicts, under contract or otherwise. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

NOTE.—Section 300, act of March 7th, 1883.

Clothing furnished discharged convicts.

SEC. 301. Whenever any territorial convict shall be discharged from imprisonment, and shall be destitute of proper and sufficient clothing, and of means to procure the same, the governor is hereby authorized and directed to provide proper and sufficient clothing for such prisoner, upon the certificate of the warden or other officer in charge of the penitentiary, that the same is necessary: *Provided*, The cost of such clothing furnished any one prisoner shall not exceed fifteen dollars; and he shall also pay the additional sum of five dollars in money, and, upon the filing by the governor, in the office of the territorial auditor, of the certificate of such warden, or other officer in charge, and of the governor, that such clothing was necessary and has been furnished, the said officer is authorized and directed to draw his warrant on the territorial treasury for the amount so expended for clothing in favor of the governor, payable out of the money in the treasury not otherwise appropriated.

Meaning of word maintenance.

Sec. 302. Whenever the word maintenance occurs in the preceding sections of this chapter, it is understood to mean support, in sickness as well as health, including all necessary medical attendance and care.

NOTE—Act of February 20, 1879

12th ses p 66.

Contract with county commissioners for keeping convicts

Sec. 303. When it shall come to the knowledge of the governor, and in his discretion he believes that the present penitentiary at Deer Lodge is insufficient to contain the prisoners sentenced to confinement therein, he shall so notify the judges of the supreme court holding district courts in the territory. The governor thereupon, shall contract with the county commissioners of such counties as have suitable county jails, for penitentiary purposes for the keeping of such convicts as may be thereafter sentenced to confinement in the penitentiary, at a rate not to exceed one dollar and fifty cents per day for the term of such confinement, and notify the district judges aforesaid what jails have been procured for penitentiary purposes under the provisions of this section; and thereafter such jails shall be taken and considered, for all intents and purposes, to be penitentiaries of this territory.

12th ses p 66.

Duty of judges

SEC. 304. The several district judges, in sentencing any person convicted of a felony, shall in such sentence, designate the particular penitentiary in which said convict shall be imprisoned, so that the intention of the foregoing section may be fulfilled.

12th ses p 67.

Laws applicable.

SEC. 305. All laws now in force applicable to the penitentiary at Deer Lodge, and the keeper and convicts thereof, are hereby made applicable to the penitentiaries hereby created.

NOTE—Sections 303, 304 and 305, Act of Feb 22, 1881.

Appointment and duty of visiting physician

SEC. 306. It shall be lawful for the governor of the Territory of Montana, once a year, and whenever oftener he may deem it necessary, to appoint a person learned in the science of medicine and surgery, who shall be a resident practicing physician in the Territory of Montana. It shall be the duty of said appointee to visit the insane asylum and territorial penitentiary, and examine the management of said institutions, as to their diet, medical and surgical attention, and all matters and things pertaining to or affecting the health of the same; and he shall forthwith make report to the governor of the result of his investigation, with such suggestions as he may deem necessary to promote the health of the institutions examined by him.

Compensation

SEC. 307. The physician performing such service shall receive twenty dollars per day while so employed and such actual expenses as may be incurred. The auditor shall draw his warrant on the territorial treasurer for such expense, on the governor's certificate, in favor of the person entitled thereto: *Provided*, That the time allowed for the examination of any institution at any one time shall not exceed three days.

NOTE—Sections 306 and 307 Act of March 7, 1883

Good time table

SEC. 308. That every convict who is now or who may hereafter be confined in the territorial penitentiary and who shall have no infraction of the rules and regulations of the penitentiary or laws of the territory recorded against him, and who performs in a faithful manner the duties assigned to him, in an orderly and peaceable manner, shall be entitled to the diminution of time from his sentence as appears in the following table, for the respective years of his sentence, and *pro rata* for any part of a year when the sentence is for more or less than a year:

NUMBER OF YEARS OF SENTENCE.	GOOD TIME GRANTED.	TOTAL GOOD TIME MADE.	TIME TO BE SERVED IF FULL TIME IS MADE
1st year	1 month	1 month	11 months
2d year	2 months	3 months	1 y'r and 9 months
3d year	3 months	6 months	2 y'rs and 6 months
4th year	4 months	10 months	3 y'rs and 2 months
5th year	5 months	1 year and 3 months	3 y'rs and 9 months
6th year	6 months	1 year and 9 months	4 y'rs and 3 months
7th year	6 months	2 years and 3 months	4 y'rs and 9 months
8th year	6 months	2 years and 9 months	5 y'rs and 3 months
9th year	6 months	3 years and 3 months	5 y'rs and 9 months
10th year	6 months	3 years and 9 months	6 y'rs and 3 months
11th year	6 months	4 years and 3 months	6 y'rs and 9 months
12th year	6 months	4 years and 9 months	7 y'rs and 3 months
13th year	6 months	5 years and 3 months	7 y'rs and 9 months
14th year	6 months	5 years and 9 months	8 y'rs and 3 months
15th year	6 months	6 years and 3 months	8 y'rs and 9 months
16th year	6 months	6 years and 9 months	9 y'rs and 3 months
17th year	6 months	7 years and 3 months	9 y'rs and 9 months
18th year	6 months	7 years and 9 months	10 y'rs and 3 months
19th year	6 months	8 years and 3 months	10 y'rs and 9 months
20th year	6 months	8 years and 9 months	11 y'rs and 3 months
21st year	6 months	9 years and 3 months	11 y'rs and 9 months
22d year	6 months	9 years and 9 months	12 y'rs and 3 months
23d year	6 months	10 years and 3 months	12 y'rs and 9 months
24th year	6 months	10 years and 9 months	13 y'rs and 3 months
25th year	6 months	11 years and 3 months	13 y'rs and 9 months

Forfeiture of good time.

SEC. 309. In case any convict shall be guilty of the violation of any of the rules or laws of the penitentiary, or of the territory, as above provided, and has become entitled to any diminution of his sentence by the provisions aforesaid, he shall, for the first offence, forfeit, if he has made so much, two days; for the second offence, four days; for the third offence, eight days, and for the fourth offence, sixteen days, and, in addition thereto, whatever number of days more than one that he is in punishment shall also be forfeited. For more than four offences the warden shall have the power to deprive him, at his discretion, of any portion or all of the good time that the convict may have earned, but not less than as provided for the fourth offence.

Continuous sentence

SEC. 310. That whenever any convict is or has been committed under several convictions, with separate sentences, they shall be construed as one continuous sentence under this law in the granting or forfeiting of good time.

Computation of good time

SEC. 311. The warden, in computing the diminution of time for those convicts now in the penitentiary, shall allow them the "good time granted," but not the "good time made," for the year or part of a year of their unexpired sentence, the same as if this law had been in effect at the commencement of their sentence.

NOTE—Act February 16th, 1877.

Proceedings if convict insane.

SEC. 312. Whenever it shall appear that a territorial convict, who is serving a term of imprisonment in the United States penitentiary at Deer Lodge, or other prisons where territorial convicts are confined, is insane, the warden, or other officer in charge of such penitentiary or prison, shall certify the fact to the probate judge of the county in which such penitentiary or prison is located. The said judge shall thereupon cause the said convict to be brought before him, at such time and place as he may direct, and the said judge shall, also, cause to appear, at the same time and place, a jury of three citizens of his county, one of whom shall be a licensed practicing physician, who shall proceed to examine the person said to be insane; and, if such jury, after careful examination, shall certify, upon oath, that the charge is correct, such judge shall make out duplicate warrants reciting such facts, and place them in the hands of the sheriff of said county, who shall immediately, in compliance therewith, convey the person therein named and deliver him to the contractor for the custody, maintenance and treatment of insane persons, at the place designated; and such contractor shall acknowledge, by endorsement in writing upon each of said warrants, the delivery of such persons therein described to him, and the date thereof; and such sheriff shall return one or said warrants to the officer issuing the same, and forward the other to the governor of the territory, who shall file and preserve the same.

If convict restored to reason.

SEC. 313. If, at any time during the period for which such convict was sentenced, it shall appear to such contractor that he is restored to reason, and is of sound mind, he shall notify the sheriff of the county in which such penitentiary or prison is located, who shall thereupon convey and deliver him to the warden, or other officer in charge, of such penitentiary or prison, and such convict shall be confined for the remainder of the term for which he was sentenced.

Fees.

SEC. 314. For the services required by sections 312 and 313, the probate judge and sheriff shall receive the fees that are provided by chapter LXXII., relating to insane.

NOTE.—Approved February 21st, 1879.

CHAPTER XXII.

MUNICIPAL CORPORATIONS.

Sec. 315. Petition and map; census.
Sec. 316. Election.
Sec. 317. Canvass; notice of result.
Sec. 318. Officers: their first election and terms.
Sec. 319. Additions.
Sec. 320. Fee of streets, etc., vested in the corporation.
Sec. 321. May annex adjoining territory.
Sec. 322. Same.
Sec. 323. Corporate powers.
Sec. 324. Mayor and council.
Sec. 325. Powers of city council.
Sec. 326. Style of ordinances.
Sec. 327. Parties to actions.
Sec. 328. Process.
Sec. 329. Imprisonment.
Sec. 330. Prisoner may be compelled to work on streets.
Sec. 331. Appeals to District Court.
Sec. 332. Fines paid to treasurer.
Sec. 333. Majority necessary to pass ordinances.
Sec. 334. Ordinances to be recorded, etc.
Sec. 335. Ordinances: how proved.
Sec. 336. Ordinances: take effect when.
Sec. 337. Yeas and nays in passage of ordinances.

Sec. 338. Limitations.

Sec. 339. Election precincts.

Sec. 340. Elections; qualifications of voters.

Sec. 341. Plurality necessary to election.

Sec. 342. Official oaths and bonds.

Sec. 343. Wards: first annual election; vacancies.

Sec. 344. Notice to person elected; oath of office.

Sec. 345. What office mayor and alderman may not hold.

Sec. 346. Quorum, election returns, rules, etc., of council.

Sec. 347. Contracts; election of officers.

Sec. 348. Officers of city of first class; of city of second class.

Sec. 349. Official bonds.

Sec. 350. Treasurer's bond.

Sec. 351. City treasurer is collector; duties.

Sec. 352. Private use of public money prohibited.

Sec. 353. Annual report of treasurer.

Sec. 354. Warrants; how signed.

Sec. 355. Warrants paid in order of presentation; interest.

Sec. 356. Duties of city clerk.

Sec. 357. City marshal; duties of.

Sec. 358. Qualifications and duties of city attorney; salary; suspension.

Sec. 359. Chief of police.

Sec. 360. Chief of police and policemen of city of second class.

Sec. 361. Chief of police; bond; duties and powers of.

Sec. 362. Chief of fire department.

Sec. 363. Council may abolish or consolidate offices.

Sec. 364. Who eligible to office of mayor.

Sec. 365. Who eligible to office of alderman.

Sec. 366. Removal from ward vacates office.

Sec. 367. Duties and powers of mayor.

Sec. 368. President of council.

Sec. 369. Ordinance appropriating money.

Sec. 370. Veto.

Sec. 371. Police magistrate.

Sec. 372. Salary of magistrate.

Sec. 373. Salary of mayor.

Sec. 374. Council to fix salaries.

Sec. 375. Other duties may be imposed on officer; tenure of office, etc.

Sec. 376. Reconsideration.

Sec. 377. Duties of county assessor.

Sec. 378. Same.

Sec. 379. Levy and collection of taxes.
Sec. 380. Fiscal year; annual appropriation bill.
Sec. 381. Fines and costs.
Sec. 382. Powers of council.
Sec. 383. Organization and meetings of council.
Sec. 384. Classification.
Sec. 385. Corporate authority of cities; where vested.
Sec. 386. Corporate authority of towns; where vested.
Sec. 387. Election in towns.
Sec. 388. Officers of towns; how suspended.
Sec. 389. Justice of the peace.
Sec. 390. Duty of sheriff and constable.
Sec. 391. Provisions of this act applicable to towns.
Sec. 392. Special charter may be abandoned.
Sec. 393. Proceedings to abandon special charter and organize under this act.
Sec. 394. Vote for or against reorganization.
Sec. 395. If result of election for or against reorganization; proceedings.
Sec. 396. Corporate property.
Sec. 397. Discontinuance of corporation.
Sec. 398. Same.
Sec. 399. Same.
Sec. 400. Same.
Sec. 401. Same.
Sec. 402. Payment of indebtedness.
Sec. 403. Collection of taxes of disincorporated city.
Sec. 404. By-laws and ordinances of reorganized city or town.
Sec. 405. Reorganization of town.
Sec. 406. Census to be taken; other proceedings.
Sec. 407. Complaint; statement in.
Sec. 408. May purchase or lease, cancel, etc.
Sec. 409. Same.
Sec. 410. Municipal bonds.
Sec. 411. Same.
Sec. 412. Same.
Sec. 413. Redemption of bonds.
Sec. 414. Funding indebtedness.
Sec. 415. Limit of taxation.
Sec. 416. Transcript and payment of judgment.
Sec. 417. Auditing.
Sec. 418. No debt to be created except as herein provided.
Sec. 419. Eminent domain.

Sec. 420. What estates may be taken.
Sec. 421. All kinds of private property may be taken.
Sec. 422. Compensation to owner.
Sec. 423. Eminent domain; how right of exercised; commissions.
Sec. 424. Valuation; appraisement.
Sec. 425. Order of court.
Sec. 426. Payment of damages.
Sec. 427. City not required to give bond.
Sec. 428. Taxes for payment of damages.
Sec. 429. Vacation of street.
Sec. 430. Improvement of streets, etc,
Sec. 431. Collection and expenditure of street taxes.
Sec. 432. Sales for delinquent taxes.
Sec. 433. Work at expense of city.
Sec. 434. Repairs of sidewalks or gutters.
Sec. 435. No road district in city.
Sec. 436. Poll tax.
Sec. 437. Expenditure of poll tax.
Sec. 438. Contracts over $500.
Sec. 439. No repeal unless so set forth.
Sec. 440. Repealing section.

Petition and map.

SEC. 315. Whenever the inhabitants of any part of a county shall desire to be organized into a city or incorporated town, they may apply by petition in writing, signed by not less than one hundred qualified electors, residents of the territory and residing within the limits of the proposed incorporation, to the board of county commissioners of the county in which the territory is situated, which petition shall describe the limits of the proposed city or town, and of the several wards thereof which shall not exceed one square mile for each five hundred inhabitants residents therein. The petitioners shall annex to the petition a map of the proposed territory to be incorporated, and state the name of the city or town. The petition and map shall be filed in the office of the county clerk of the county subject to the inspection of all persons interested therein. Upon filing said petition the county commissioners of the county, at their next regular or special meeting, shall appoint some suitable person to take a census of the residents of the territory to be incorporated. After taking the census, the person appointed to take the same, shall return the list to the board of commissioners, and the same shall be filed by them in the county clerk's office. No corporation shall be formed unless the number of inhabitants is three hundred or upwards.

Census.

Elections.

SEC. 316. After filing said petition and census, if there be the requisite number of inhabitants for the formation of a corporation as required in the preceding section the county commissioners shall call an election of all the qualified electors, who shall be freeholders residing within the territory described in the petition. Said election to be held at a convenient place within the territory described in the petition to be designated by the county commissioners. Notice of said election shall be given by publication in some newspaper published within the limits of the territory to be incorporated, or if none be published therein, by posting notice in three public places within said limits. The notice shall be published thirty days prior to the election, and shall specify the time and place when the same will be held, and contain a description of the boundaries of the city or town. The board of county commissioners shall appoint judges and clerks of election who shall qualify as required by law, and after the election they shall report the result to the board of county commissioners together with the ballots, cast at said election. The ballots used at said election shall be "For Incorporation" or "Against Incorporation."

Canvass.

SEC. 317. The board of county commissioners shall canvass the election returns, and ballots and if a majority of the ballots cast, at the election, shall be in favor of incorporation, they shall file in the office of the county clerk the lists of the election returns, and give notice by publication, of the result. In such notice they shall designate whether the grade of the incorporation is that of a city of first or second class or town. The notice may be given by publication in a newspaper published within the town, or by posting the same, in three public places within the limits of the corporation, and thereupon the incorporation of the city or town shall be complete and judicial notice thereof shall be taken in all courts, and also in all public proceedings.

Notice of result.

Officers; their first election and terms

SEC. 318. When any incorporation of a city or town is completed, the board of county commissioners shall give notice for thirty days in a newspaper published within the limits of the city or town, or if none be published therein, by posting notice in six public places within the limits of the corporation, of the time and place or places of holding the first election for officers of the corporation. At such election, all electors qualified by the general election law of the territory, and who have resided within the limits of the city or town for three months, preceding the election, shall be qualified electors and shall choose officers for the city or town to hold office until the first annual election of officers as hereinafter prescribed. At said election there shall be elected one mayor, one police magistrate, and two aldermen from each ward, into which the city may be divided, if the incorporation be of the grade of a city; if it be a town, the electors shall choose a mayor and six aldermen, who shall manage the affairs of the corporation until the next general election. The persons so elected shall qualify in the manner prescribed by law for county officers. The board of county commmissioners shall appoint judges and clerks of election, and shall canvass and declare the result thereof. The election shall be conducted in the manner required by law for the election of county officers. At the first meeting of the board of aldermen of towns incorporated under this act, they shall be divided into two classes. The seats of the first class shall become vacant in one year; the seats of the second class shall become vacant in two years. They shall also, by ordinance, divide the town into three districts, and at all annual elections thereafter an alderman shall be elected from each district, by the electors of such town.

Additions.

SEC. 319. Whenever any territory adjoining any incorporated city or town shall be surveyed, and laid off into streets and blocks as an addition thereto, upon filing the map or plat thereof in the office of the county clerk, said territory shall become a part of such city or town: *Provided*, The mayor and council shall have control of all such additions, and shall have power by ordinance to compel the owners of any such additions to lay out streets, avenues, and alleys, so as to have the same correspond in width and direction, and be continuations of the streets, avenues and alleys in the city or town, or in the additions thereto, contiguous to or near the proposed addition; and no addition shall have any validity, rights or privileges, as an addition, unless the terms and conditions of such ordinance are complied with and the plat thereof shall have been submitted to, and approved by, the mayor and council, and such approval endorsed thereon.

Fee of streets etc vested in the town

SEC. 320. Avenues, streets, alleys, parks, and other places, on the map of any incorporated city or town, or upon any addition thereto, as mentioned, shall be deemed public property and the fee thereof vested in the city or town.

May annex adjoining territory.

SEC. 321. When any municipal corporation shall desire to annex any abutting and contiguous territory, it shall be lawful for the municipal authorities of the corporation, by an ordinance passed for that purpose, to submit the question of annexation to the qualified electors of the corporation. If a majority of the electors shall vote in favor of the annexation the municipal authorities of the city, or town, shall present to the board of county commissioners a petition for the annexation. The petition shall describe the territory proposed to be annexed and have attached thereto a map of the same. Such proceedings shall be had upon such petition as are provided in sections one and two of this act for submitting the same to a vote of the qualified electors of the proposed addition, and if a majority of the electors residing within the contiguous territory shall vote in favor of annexation, said territory shall be taken and included in, and become a part of the corporation, and the inhabitants and all property therein shall be subject to the ordinances and other regulations of the corporation as if originally forming part thereof.

Same.

SEC. 322. When an incorporated city or town shall desire to be annexed to another and contiguous city or town, the council of each thereof shall appoint three commissioners to arrange and report to the municipal authorities respectively the terms and conditions on which the annexation can be made, and if the city council, or municipal authorities of the corporation so to be annexed approve of the terms thereof, they shall by ordinance so declare, and thereupon the municipal authorities of the city or town may submit the question of annexation to the electors of the respective towns. If a majority of the electors vote in favor of annexation the council or municipal authorities shall so declare, and a certified copy of the proceedings for annexation, and of the ordinances, shall be filed with the clerk of the county in which the city or towns so annexed are situated, and when so filed the annexation shall be deemed complete, and the city or town to which the annexation is made shall have power, in addition to other powers conferred by this act, to pass all ordinances which shall be necessary to carry into effect the terms of the annexation: *Provided*, Such annexations shall not affect or impair any rights, obligations, or liabilities, then existing for or against either of such cities or towns.

Corporate powers.

SEC. 323. Cities and towns organized as prescribed by this act shall be bodies politic and corporate, under the name designated in their organization, and may sue or be sued, contract or be contracted with, acquire and hold real, personal or mixed property, for municipal purposes, and real estate sold for taxes, and dispose of the same, have a common seal which they may change at pleasure, and have such other powers as are incident to corporations of like character, not inconsistent with the laws of the United States or of this territory. All and every process and notice whatever, affecting any such city or town, shall be served upon the mayor, and in his absence upon the clerk, and in the absence of these officers from the city or town, then by leaving a certified copy at the office of said clerk.

Mayor and council

SEC. 324. The administration and government of each incorporated city incorporated under this act shall be vested in a mayor, and in a common council, composed of two aldermen from each ward into which the city may be divided, and in such other officers as the mayor and common council may by ordinance provide for and elect or appoint.

Powers of council.

SEC. 325. The city council of all cities incorporated under this act shall have the following powers:

Registration.

I. To provide by ordinance for the registration of the voters within the municipality.

Census.

II. To provide for taking the census of the city or town, but no census shall be taken more than once between the years prescribed by law for census to be taken by the United States.

Finances.

III. To control the finances and property of the corporation.

Appropriations

IV. To appropriate money for corporate purposes only, and provide for the payment of debts and expenses of the corporation.

Taxes.

V. To levy and collect taxes for general and special purposes on all real, personal, and mixed property, within the corporation, subject to taxation under the laws of the territory.

Licenses.

VI. To fix the amount, terms, and manner of issuing and revoking licenses subject to the law of the territory, and it shall be competent for the city council to refuse licenses whenever it shall be deemed to the best interests of the city so to do.

Same.

VII. To license all pursuits, industries, professions or occupations for which, under the territorial law, a license is required to be paid: *Provided*, That in no case shall the municipal authorities require any license exceeding in amount that which is required to be paid under the territorial law for a like pursuit or occupation.

Buildings

VIII. To erect all needful buildings for the use of the city or town.

Indebtedness.

IX. To contract an indebtedness on behalf of the city or town upon the credit thereof by borrowing money or issuing bonds for the following purposes, to-wit: Erecting public buildings, constructing sewers, constructing water-works, supplying the city with water by contract, the purchase of fire apparatus, the construction or purchase of canals or ditches for supplying the city or town with water. The total amount of indebtedness authorized to be contracted by virtue of this act shall not at any time exceed four per centum of the total assessed valuation of the taxable property of the cities of the first class, or two per centum for cities of second class and towns according to the last assessment.

Stueets and alleys.

X. To lay out, establish, open, alter, widen, extend, grade, pave or otherwise improve streets, alleys, avenues, sidewalks and public grounds, and vacate the same. To provide for lighting and cleaning the streets, alleys, avenues; to regulate the use of sidewalks, and require the owners of the premises adjoining to keep the same free from snow or other obstruction, to regulate the depositing of ashes, garbage or other offensive matter, in any street, alley, or on public grounds; to provide for and regulate street crossings, curbs and gutters; to regulate and prevent the use or obstruction of streets, sidewalks and public grounds, by signs, telegraph poles, posting hand bills and advertisements.

Grade of highways.

XI. The mayor and council of any city or town governed by this act shall have power to establish by ordinance the grades of any street, alley, or avenue within the city or town, and when the grade of any street, avenue, or alley shall have been so established, such grade shall not be changed except by a vote of two-thirds of the council, and not then until the damages to property owners, which may be caused by such changes of grade, shall have been assessed and determined by three disinterested appraisers, who shall be appointed by the mayor and confirmed by the council for that purpose, who shall make such appraisment, taking into consideration the benefits, if any, to such property, and file their report with the city clerk within ten days after receiving notice of their appointment, and the amount of damages so assessed shall be tendered to such property owners or their agents before any such change of grade shall be made.

XII. To regulate and prohibit traffic and sales upon the streets, sidewalks and public grounds. Sale on streets.

XIII. To regulate or prohibit the fast driving of horses, animals or vehicles within the corporate limits. Fast driving

XIV. To regulate and control the laying of railroad tracks, and prohibit the use of engines and locmotives propelled by steam, or to regulate the speed thereof when used. Railroads.

XV. The mayor and council shall have power to require the lighting of any railway within the city or town, the cars of which are propelled by steam, in such manner as they shall prescribe, and may fix and determine, the number, style and size of the lamp-posts, burners, lamps,, and all other fixtures and apparatus necessary for such lighting, and the points of location for such lamp-posts, and in case the company owning or operating such railway shall fail to comply with such requirements, the council may cause the same to be done, and may assess the expense thereof against such company, and the same shall constitute a lien on any real estate belonging to such company and lying within such city or town, and may be collected in the manner as taxes for general purposes. Same.

XVI. To license and authorize the construction and operation of street railroads and require them to conform to the grade of the streets as the same are or may be established. Street railroads.

XVII. To regulate the numbering of houses and lots and to change the same. Number houses

XVIII. To provide for the cleaning of waters, water courses and streams within the city, or to alter, straighten, or widen the same, and the draining and filling in of ponds or wells on private property when necessary to the public health or public welfare. Water courses

XIX. To license, tax, and regulate auctioneers, peddlers, pawnbrokers, hackmen, omnibuses, drivers, porters, saloons, billard tables, ten-pin alleys, shooting galleries, shows, circuses, theatrical performances and places of amusements within the limits of the corporation. Licenses

XX. To regulate or prohibit dance houses, hurdy gurdy houses, houses of prostitution, houses of lewd resort, or other places by whatever name called, of public resort where females act as waitresses or servants, and where spiritous or vinous liquors are retailed. Dance houses, etc

Fraudulent practices.

XXI. To suppress and punish all fraudulent devices and practices for the purpose of obtaining money or property, and to prohibit the sale or exhibition of immoral publications, prints, pictures or illustrations.

Markets

XXII. To establish markets and market houses, and provide for the supervision and use, thereof.

Food

XXIII. To regulate the sale of meats, poultry, fish, game, butterine, oleomargarine, and other imitations of butter, lard, vegetables, and other provisions, and provide for the inspection thereof.

Measures.

XXIV. To regulate the inspection, weighing, and measuring, of wood, coal, and hay, within the city.

Vaults, etc.

XXV. To regulate the construction, use, repair of vaults, cisterns, hydrants, pumps, sewers and gutters.

Public peace.

XXVI. To prevent and punish intoxication, fights, riots, loud noises, disorderly conduct, obscenity and acts or conduct calculated to disturb the public peace, or which is offensive to public morals within the city or town.

Fire limits.

XXVII. For the purpose of guarding against fire they shall have power to prescribe the limits within which wooden or combustible buildings shall not be erected, placed, or repaired, and to establish fire limits within the city,

Fire department

XXVIII. To establish a fire department and and prescribe and regulate their duties.

Engine houses

XXIX. To erect engine houses and provide engines and other implements for the extinguishment of fire.

Chimneys, etc.

XXX. To inspect chimneys, flues, fireplaces, stove pipes, boilers, and when dangerous to require the same to be removed or put in order.

Gunpowder, etc.

XXXI. To regulate and prevent the storage or handling of gunpowder, tar, pitch, coal, oil, turpentine, and to prohibit the storage of the same within three miles of the city limits.

Bonfires etc

XXXII. To regulate or prohibit the building of bonfires, the explosion of fireworks, firecrackers, torpedoes, or other pyrotechnics, within the city.

Cruelty to animals.

XXXIII. To prohibit and punish cruelty to animals.

XXXIV. To define and abate nuisances and to impose fines upon parties guilty of creating, continuing or suffering a nuisance to exist on the premises which they occupy or control.

Nuisances

XXXV. To restrain and punish vagrants, mendicants and persons guilty of disorderly conduct.

Vagrants.

XXXVI. To establish and maintain a calaboose or jail for the confinement of persons convicted of violating the ordinances of the city and to make rules for the government of the same and appoint a keeper thereof.

Jail.

XXXVII. To regulate, restrain or prohibit the running at large of horses, cattle, swine, sheep, goats and dogs, and to authorize the impounding and sale thereof, if found at large contrary to ordinance.

Animals at large

XXXVIII. To license the keeping of dogs, and provide for the killing or destruction thereof if found running at large without license.

Dogs.

XXXIX. To prevent the encumbering of streets, sidewalks, alleys or public grounds with carriages, wagons, lumber, fire-wood or other obstacles or materials.

Obstructions in streets

XL. To prevent the riding or driving of animals or the drawing of vehicles of any kind on the sidewalks of the city or the doing of damage in any way to such sidewalks.

Sidewalks.

XLI. To prevent horse-racing or the immoderate riding in the streets of the city, and to provide for the hitching of all animals on the street when the owner is absent.

Fast riding.

XLII. To regulate or prohibit coasting, skating, sliding, or tobogganing on the streets or alleys, or the indulgence in other amusements dangerous or annoying to the inhabitants, or having a tendency to frighten animals.

Skating, etc

XLIII. To regulate the location of slaughter houses, breweries, distilleries, livery stables, foundries, blacksmith shops, planing mills, soap factories and tanneries within the city, and prohibit any offensive and unwholesome establishment within three miles of the corporation limits.

Offensive business.

XLIV. To require the keepers and owners of pawn shops, second-hand and junk stores, to keep a record of all articles, purchases or pawned to them, which record, and the articles purchased or pawned, shall be subject to the inspection of the police.

Pawnshops.

Same.

XLV. To prevent the keepers of pawn shops and second-hand stores from purchasing any article from a minor without the written consent of the parent or guardian of such minor.

Board of health

XLVI. To appoint a board of health and prescribe its powers and duties.

Hospital.

XLVII. To establish at a suitable point without the limits of the city in case of necessity a hospital to prevent the spread of small-pox or other contagious or infectious diseases, and to regulate the control thereof, and do all other acts which may be necessary for the promotion of health, and to prevent the spread of contagious diseases within the city.

Cemeteries.

XLVIII. To establish and regulate cemeteries within or without the corporation, and acquire lands for this purpose and prohibit the establishment of cemeteries within three miles of the corporation limits.

Duties of officers.

XLVIX. To prescribe the duties of marshals, chief of police, policemen, watchmen, fire marshal and all subordinate offices created by ordinance and to fix their compensation.

Ordinances

L. To pass all ordinances and make all regulations proper and necessary to carry into effect the powers hereby granted with power to impose such fines and penalties as the city council shall deem proper for the violation of any ordinance: *Provided*, No fine or penalty shall exceed three hundred dollars, and no imprisonment exceed ninety days for any one offence.

Water works, gas works, etc.

LI. They shall have power to erect water works and gas works within the city, or to provide by contract for their erection by other parties, and to protect the same from injury. The jurisdiction of the city for this purpose shall extend over the territory occupied by such works, and all reservoirs, streams, trenches, pipes, drains, used in the construction and operation of the same, and also over the source or stream from which the water is taken, with power to enact all ordinances and regulations necessary to carry the powers hereby conferred into effect. For this purpose the city shall be authorized to condemn private property in the manner provided by law.

Cisterns, etc.

LII. They shall have power to construct cisterns and reservoirs within or without the city and to provide pumps, hydrants, pipes for the purpose of conveying and distributing water to the city and its inhabitants, and to levy a just and equitable tax upon all consumers of water for the purpose of defraying the expenses of the city in procuring water.

Eminent domain.

LIII. They shall have the right and privilege of taking water in sufficient quantity for the purposes mentioned from any spring or stream: *Provided*, That they shall obtain the consent of any person or corporation owning the same, or otherwise the same shall be condemned and damages for taking or appropriating the same shall be assessed and paid as are damages for the taking and condemnation of private property for public use as the law now or hereafter may prescribe.

Poll tax.

LIV. They shall have power to levy and collect annually from each able bodied male citizen resident of said city or town, between the ages of twenty-one and forty-five years, a poll-tax not exceeding three dollars per capita; and in case of failure or refusal of any person within the prescribed age to pay said tax, to provide by ordinance that the person failing or refusing shall work for one day on the public streets of the city.

Vacancies.

LV. The city council or municipal authorities shall have power to fill any vacancy occurring by death, removal, or resignation, of any city or municipal officer, except the office of mayor or alderman, as hereinafter provided.

Sewerage, etc.

LVI. To lay off the city in suitable districts for the purpose of establishing a system of sewerage and drainage, to provide such system, and regulate the construction and repairs and use of sewers and drains, and of all proper house connections and branches, and provide penalties for any obstruction of or injury to any sewer or part thereof.

Partition fences

LVII. To regulate partition fences and party walls.

Buildings

LVIII. To prescribe the thickness, strength, and manner of constructing stone, brick, and other buildings, and the construction of fire escapes therein.

County jail.

LIX. To use the county jail for the confinement or punishment of offenders, subject to such conditions as are imposed by law, and with the consent of the board of county commissioners.

Official bonds.

LX. To require of all officers or servants elected or appointed in pursuance of this act, bond and security for the faithful performance of their duties, as may be provided by ordinance. No officer shall become security upon the official bond of another.

Reports.

LXI. To require from any officer of the city, at any time, a report in detail of the transactions in his office, or any matter connected therewith.

Shade trees.

LXII. To provide for the planting and protection of shade trees.

Ordinances

LXIII. The city council or municipal authority shall have power to pass ordinances, which must be consistent with this act and the laws of this territory for the purpose of carrying into effect the powers hereby conferred.

Style of ordinances.

SEC. 326. The style of all ordinances shall be "Be it ordained by the city council of ——— City"; or, "The board of aldermen of the town of ———".

Parties

SEC. 327. All actions brought to recover any fine or to enforce any penalty under the ordinance of any city or town, shall be brought in the name of the city or town as plaintiff. No prosecution shall constitute a defence for any second or subsequent violation of the same or a different ordinance, although the causes of action may have existed at the same time. No person shall be incompetent as judges, juror or witness in any action to which the city or town shall be a party on account of being a resident or property owner within the city or town.

Process.

SEC. 328. In all actions for the violation of any ordinance the first process shall be a summons: *Provided*, That a warrant for the arrest of a person charged with violating any ordinance may issue upon the affidavit of any person setting forth that the person making the affidavit has reasonable grounds to believe, and does believe, that the person charged is guilty of violating the ordinance and of the offence mentioned in the affidavit.

Imprisonment.

SEC. 329. Any person convicted of violating any of the ordinances, and upon whom any fine shall be imposed by the court, who fails or refuses to pay such fine, may be committed to the city jail, calaboose or other place provided by the city until such fine, penalty and costs shall be paid; *Provided*, That no imprisonment under a single conviction shall exceed ninety days; and provided further, that not to exceed two dollars per day shall be allowed in satisfaction of such fine, penalty and costs.

Prisoner to work on streets

SEC. 330. The city council or corporate authorities shall have power to provide by ordinance that every person convicted and who fails to pay the fine imposed shall also be required to work upon the streets, or elsewhere, of the city or town in said satisfaction of said fine, and shall be allowed not to exceed two dollars per day for each day's work performed.

Appeals

SEC. 331. Appeals shall be allowed from the judgment of any police magistrate or justice of the peace to the District Court of the county in cases arising under this act and the ordinances of the city or town subject to the same conditions and requirements as now are or may be prescribed by law for appeals from justices' court to the District Court.

Fines paid to treasurer

SEC. 332. All fines and forfeitures for the violation of ordinances shall be paid to the city treasurer for the use of the corporation.

Ordinances.

SEC. 333. All ordinances or resolutions shall require for their passage a majority of the members of the city council.

Same.

SEC. 334. As soon as may be after the passage of any ordinance it shall be recorded in a book kept for that purpose, and known as the book of ordinances of the city or town of ——. All ordinances shall be signed by the mayor or presiding officer of the council and by the city clerk. Ordinances of a general nature, and those imposing any fine, penalty or forfeiture, shall be published in some newspaper published within the limits of the city or town: *Provided*, If no newspaper be published therein, such ordinances shall be posted in the hall or room occupied or used by the city council as the place of their general meeting, and a copy thereof shall also be posted in the room or place at which the police court is held.

Same.

SEC. 335. Ordinances may be proved by the seal of the corporation, and when printed and published in book or pamphlet form by authority of the city council shall be received in evidence in all courts of this territory without further proof.

Same

SEC. 336. Ordinances shall take effect and be in force from and after their passage and the publication and notice thereof as provided in section 334 of this act. The book of ordinances shall be received in evidence and considered in all courts in this territory as *prima facie* evidence that the ordinances contained therein were passed and published as required by this act.

Same

SEC. 337. In the passage of ordinances and resolutions, by the city council, or corporate authorities, the yeas and nays shall be called and recorded, and a majority of the members shall be required in order to pass any ordinance or resolution.

Limitations

SEC. 338. All suits for the recovery of any fine or the prosecution for violating any ordinance shall be barred in one year after the commission of the offence for which the fine is sought to be recovered or the act punished.

Election precincts.

SEC. 339. Election precincts in that part of the county embraced within the corporate limits of a city shall correspond with the ward lines in such city, and such precincts shall correspond in number with the wards of the city and be co-extensive with the same; and every election shall be held at a covenient place in each precinct, to be designated by the common council.

Elections

SEC. 340. The annual election for city and town officers, organized under this act, shall be held on the second Monday of April, unless a different date be fixed by ordinance. The city council shall appoint the judges and clerks of election, and place or places of voting under all municipal elections: *Provided*, There shall be one place of voting in each ward in which the city may be divided, and electors shall vote in the ward in which they respectively reside. The qualifications of electors shall be such as are prescribed in section 318 of this act. Elections shall be conducted in the manner prescribed by law for the election of county officers. At all annual or other elections the returns shall be made to the city council, or the aldermen of any incorporated town, who are hereby authorized to canvass the vote and declare the result, and thereafter to cause to be made out, under the seal of the corporation, a certificate of election to each person elected.

Same.

SEC. 341. The person receiving a plurality of the votes at any municipal election shall be the person elected. When a tie exists between two or more persons voted for, the city council or board of aldermen of a town, may by resolution provide by lot for the election of one of the persons having an equal number of votes.

Official oaths and bonds.

SEC. 342. All officers elected; before entering on the duties of office, shall take an oath or affirmation to support the constitution of the United States and the laws of Montana Territory. The corporate authorities of any city or town may require from any officer elected or appointed by them, a bond with approved surety for the faithful performance of the duties of his office.

Wards.

SEC. 343. The first common council elected as provided under section 318 of this act, shall divide the city into wards for election and other municipal purposes, having regard to population, so as to make them as nearly equal as may be: *Provided*, That cities of the first class shall not have less than three wards nor more than ten, and that cities of the second class shall not have less than two wards nor more than four. *And provided further*, That all changes in the number or boundary of wards shall be by ordinance; and no new ward shall be created unless it shall contain within its boundaries at least one hundred and fifty voters. At the first annual election thereafter there shall be chosen one mayor, one police magistrate, and two aldermen from each ward into which the city has been divided. The mayor and police magistrate shall serve for one year from and after the first Monday in May after said election. One of the aldermen elected from each ward at said election shall serve for one year, and the other for two years from and after the first Monday in May after said election. The ballots for aldermen shall designate which is voted for, for the long, and which for the short term. Thereafter one alderman shall be chosen from each ward of the city who shall serve for two years. If any vacancy shall occur in the office of aldermen by death, resignation, removal, or otherwise, the same shall be filled by election, so that there may be always in the common council two members from each ward whose term of service shall expire in different years.

Officers chosen at first election and after.

Vacancies.

SEC. 344. At all elections after the first provided for in this act, the city clerk shall, within five days after the election, notify the persons so elected thereof, and any person elected to any office named in the preceding section shall, within ten days after such election or notice thereof, and before entering upon the duties of his office, take and subscribe before the city clerk, or some authorized officer, an oath to support the constitution of the United States and the organic act of this territory, and faithfully to discharge the duties of his office to the best of his ability, and file the same, duly certified by the officer administering it, in the office of the city clerk. Such oath shall be administered and certified without fee. The neglect to file such oath or official bond, when required, shall be deemed a refusal to serve in and vacation of such office.

Notice to person elected

Oath of office.

What office mayor and alderman may not hold

SEC. 345. No mayor or alderman shall, during the time for which he has been chosen or elected, be appointed to any municipal office which shall have been created or the emoluments of which shall have been increased during the term of service for which he was elected; nor shall any mayor or alderman be interested directly or indirectly in the profits of any contract entered into while he was in office.

Quorum

Election returns, etc.

Rules, etc.

SEC. 346. A majority of the members of the council and board of aldermen shall be necessary to constitute a quorum for the transaction of business They shall be judges of the election returns and qualifications of their own members. They shall determine the rules of their own proceedings, and cause to be kept a journal thereof, which shall be open to the inspection of any person interested therein. They may compel the attendance of absent members at any stated or special meeting in such manner and under such penalties as they may see fit to prescribe.

Contracts election of officers.

SEC. 347. In making contracts by the city council or corporate authorities the yeas and nays shall be called and recorded. In the election of officers a majority of the whole number shall be requisite to appoint or elect, and the votes thereon shall be entered in the book containing their proceedings.

Officers of city of first class.

SEC. 348. The city council of cities of the first class at its first organization shall elect by ballot one city treasurer, a city clerk, one city marshal, one city attorney, a chief of police, a chief of the fire department, a city surveyor, and such number of policemen as the wants or the necessities of the city may require The persons so elected shall serve until the first annual election. Thereafter the city council elected at the regular annual election shall in like manner elect by ballot the officers mentioned, and any other officers whose office is created by ordinance. They shall have power to fix by ordinance the salary or emoluments of all the officers which they shall elect, to prescribe their duties and provide for their suspension or removal in cases of neglect, misconduct or dereliction of duty: *Provided*, That the city council of a city of the second class shall elect in like manner only a treasurer, clerk, city attorney and city surveyor, and any other officer whose office is created by ordinance.

Of city of second class

Official bonds

SEC. 349. Every bond of a city officer shall be executed with sufficient sureties to the city by its name and shall be in a sum to be fixed by the city council when not otherwise prescribed, and shall be approved by the mayor and filed with the city clerk within the time prescribed for filing his oath of office and before entering on the duties of his office, except that the clerk's bond shall be filed with the treasurer. Whenever the city council shall deem any bond insufficient they may require an additional bond to be executed and filed in a sum and within a time, not less than ten days, to be fixed by them.

Treasurer's bond.

SEC 350. The treasurer shall give bond to the city in its corporate name, with sureties to be approved by the council or board of aldermen, in such sum as may be required, which shall not be less than the total amount of moneys estimated to be paid to him during the year for the faithful performance of his duties as treasurer, and also when he vacates the office that he will deliver over to his successor all, money, books, papers, property and all other things belonging to the city or town, held by him as treasurer.

City treasurer is collector, duties

SEC. 351. The city treasurer shall also be the city collector. He shall receive all moneys belonging to the corporation and shall deposit all moneys in his name as treasurer; he shall keep his books and accounts in such a manner as to correctly present the condition of the city finances, and the books shall be at all times subject to the inspection or examination of the mayor and council or any member thereof. He shall keep a separate account of each fund or appropriation and the debits and credits thereof. He shall give every person paying money to him as treasurer a receipt specifying the date of payment, and shall make out and file monthly a statement with the city clerk of all moneys so received. When required by the council he shall render an account, showing the condition of the treasury, and the money on hand at the time of making the statement. All warrants or orders redeemed, and paid by him, and all vouchers shall be delivered to the clerk and filed. He shall keep a register of all warrants paid, which shall show the date, amount, number, and the person to whom and the fund from which the same was paid.

Private use of public money prohibited.

SEC. 352. The treasurer is hereby expressly prohibited from using directly or indirectly the money or property of the corporation for his own private gain or profit, or that of any other person or persons.

Annual report.

SEC. 353. The treasurer shall annually make out and submit to the council at its last meeting, prior to the annual election, a detailed account of all receipts and expenditures during the existence of the past fiscal year, which account shall be filed with the city clerk; an abstract thereof shall be published in some newspaper printed in the city or town, or if none is published therein, by posting the same in the hall or room used and occupied by the city council.

Warrants how signed

SEC. 354. All warrants drawn upon the treasurer shall be signed by the mayor and countersigned by the city clerk, stating for what purpose and the fund or appropriation from which the same shall be paid, and the person to whom it is payable.

Warrants paid in order of presentation, interest.

SEC. 355. Every fund in the hands of any treasurer of any city or town incorporated under this act shall be paid out in the order in which the orders drawn thereon shall be presented for payment, and in case there are no funds in the hands of said treasurer applicable for the payment of said warrant, the treasurer shall endorse on the same, "Not paid for want of funds," and enter the same in a book kept for said purpose, and thereafter said warrant shall bear interest at the rate of seven per cent. per annum until there are funds in the hands of the treasurer to pay the same. No money shall be transferred from one fund to another except by authority of an ordinance of the city council.

Duties of city clerk

SEC. 356. The city clerk shall attend all meetings of the city council, record and sign the proceedings thereof and all ordinances, by-laws, resolutions and contracts adopted or entered into, and countersign and keep a record of all licenses, commissions and permits granted or authorized by the council. He shall enter in a book all ordinances, regulations and by-laws adopted by the council. He shall enter in a finance book the date, amount and person in whose favor and for what purpose warrants are drawn upon the treasurer. He shall countersign and cause to be published or posted, as herein provided, all ordinances, by-laws and resolutions of the council. He shall be the custodian of the corporate seal, and file, as required by ordinance or resolution, all records, books, papers or property belonging to the corporation and deliver the same to his successor when qualified. He shall permit any person, with proper care, to examine the books and records in his keeping, and shall make and certify a copy thereof under the seal of the corporation, when required, on payment of like fees as are allowed county clerks therefor. He shall draw and countersign all orders on the city treasury ordered by the council, and none others. He shall perform such other duties applicable to his office or [as] the city council by ordinance may require to be performed. He shall give bond, with approved surety, in the amount required by the city council, for the faithful performance of the duties required by this act. He shall keep a record of all proceedings at the annual and special elections of the city and give notice of such elections as required by law, and notify persons elected or appointed to office thereof. He shall transmit to the county clerk within ten days after election and qualification a certified statement of the name and term for which elected of the mayor, clerk and treasurer, and to the clerk of the District Court immediately after their election and qualification a like statement of the time and term for which elected, of the police justice and marshal of the city. He shall have power to administer oaths and take acknowledgments, and in matters where the city or its officers are not concerned, shall be entitled to charge and receive therefor the same fees as provided by law for county clerks.

City marshal: duties of.

SEC. 357. The city marshal shall receive and be paid a salary, to be fixed by ordinance, not exceeding one hundred and fifty dollars per month. He shall execute and return all writs and process to him directed by the police magistrate for violation of the city ordinances. He shall apprehend and arrest any person in the act of committing any offence against the laws of the territory or ordinances of the city, with or without warrant, and bring such person forthwith before the police magistrate for examination or trial. He shall report to the city council all delinquencies, neglect of duty, or official misconduct, of the policemen, for the action of the council, In the discharge of his duties he shall possess like powers and be subject to like responsibilities as are constables of the counties. He shall hold his office for one year from and after his election, unless suspended or removed by the council for the violation or neglect of the duties devolved upon him by this act and the ordinances of the city. In case of suspension or removal the city council may elect by ballot a person in his stead, who shall hold office for the unexpired term of the marshal so removed.

City attorney: his qualifications and duties.

SEC. 358. The city attorney to be elected shall be a person versed in the law and who has been licensed to practice as an attorney in this territory. He shall hold his office for one year unless suspended or removed as provided by this act. It shall be the duty of the city attorney to attend before the police court and other courts of the city, and the district court, and prosecute in behalf of the city all violations of the ordinances of the city, and he shall generally do and perform such other acts as pertain to the office of the city or corporation counsel. He shall, when required, draw for the use of the council contracts and ordinances for the government of the city, and when required shall give to the mayor or city council written opinions on questions pertaining to the duty and the rights, liabilities and powers of the corporation. For such services he shall receive a salary to be fixed by the city council, not exceeding fifteen hundred dollars, in cities of the first class, and in cities of the second class not exceeding four hundred dollars per annum. Nothing herein shall be taken or construed as preventing the city council from employing other and additional counsel in special cases and providing for the payment for such services. The city attorney may be suspended or removed from office by the city council for the neglect, violation or disregard of the duties required by this act or the ordinances of the city. In case of suspension or removal the city council may elect a successor in his stead who shall hold office for the unexpired term of the attorney removed.

Salary.

Suspension

SEC. 359. The chief of police, under the direction of the city council of cities of the first class, shall have general control of all policemen and watchmen which shall be elected or appointed by the city council. He shall have like powers to suppress riot and disorder within the limits of the corporation as by this act are conferred upon the city marshal. He, with all policemen elected or appointed, shall be at all times subject to suspension or removal by the city council, with full authority on the part of the council to appoint others in their stead.

Chief of police.

SEC. 360. The mayor of a city of the second class shall appoint, with the consent of the council, one chief of police and as many policemen as the city council may deem necessary, who shall hold their appointments until removed for cause by the council, or until said council shall deemed their services no longer needed. He shall have power in case of emergency to appoint as many special policemen as he may think proper, but such appointments shall be reported to and subject to the action of the council at its next meeting.

Chief of police and policemen of city of second class.

Chief of police; bond, duties and powers of

SEC. 361. The chief of police shall give a bond in form similar to that required by law of constables. He shall possess the powers, enjoy the privileges and be subject to the liabilities conferred and imposed by law on constables, and be taken and included in all writs and papers addressed to constables. He shall execute all orders to him directed by the mayor, and all processes directed to him by the police magistrate, and shall attend on the sittings of said court and to arrest, with or without process, and with reasonable diligence, to take before the police justice every person found in such city in a state of intoxication or engaged in any disturbance of the peace, or violating any law of the territory or ordinance of the city. He may command all persons present in such case to assist him therein, and if any person being so commanded, shall refuse or neglect to render such assistance, he shall forfeit not exceeding ten dollars. He shall be entitled to the same fees allowed to constables for similar services; for other services rendered the city, such compensation as the council may fix. He may be removed for official incapacity or misconduct by a two-thirds vote of the city council, approved by the mayor.

Chief of fire department

SEC. 362. It shall be the duty of the chief of the fire department, under the direction of the city council, to manage and control the fire engines and all apparatus furnished by the city for the extinguishing and prevention of fires; to superintend and direct the movements of all fire companies within the city, to examine, inspect all buildings, chimneys, flues, boilers, within the city, and if dangerous, or liable to cause fire, to require the same to be put in safe condition or removed. He shall be subject to removal at the will of the council, who may appoint another in his stead.

Council may abolish or consolidate offices

SEC. 363. The city council of each incorporated city organized under this act shall have the right and power to abolish any of the offices specified in this act and which they are empowered to fill by ballot, or they may in their discretion, consolidate two or more of the offices mentioned and provide by ordinance for the discharge of the duties when any offices are so consolidated.

Mayor, eligibility

SEC. 364. No person shall be eligible to the office of mayor unless he shall be at least twenty-five years old and a freeholder, and resident of the territory for at least three years, and a resident of the city for which he may be elected mayor two years next preceding his election to said office, and shall reside in the city or town for which he shall be elected mayor during his term of office.

Alderman; eligibility.

SEC. 365. No person shall be eligible to the office of alderman unless he be a free-holder and a resident of the ward so electing him for at least one year preceding such election.

Removal from ward vacates office.

SEC. 366. Any person removing from the city or ward for which he is elected, or any officer who shall refuse or neglect for thirty days after notice of his election or appointment to enter upon the discharge of the duties of his office shall be deemed to have vacated his office and the council shall proceed to fill the vacancy as herein prescribed.

Duties and powers of mayor.

SEC. 367. The mayor shall be chief executive officer thereof. He shall cause all ordinances to be faithfully executed. He shall from time to time communicate to the city council such information, and recommend such measures as in his opinion, may tend to the improvement of the finances, police, health, security, ornament, comfort and general prosperity of the city or town, and shall cause all subordinate officers to be dealt with promptly for any neglect, or violation of duty. He shall have such jurisdiction as may be vested in him by ordinance over all places within three miles of the corporate limits of the city, for the enforcement of any health or quarantine ordinances or regulation thereof. He shall have power for cause to suspend any officer elected or appointed under the provisions of this act, except aldermen, until the next regular meeting of the city council when he shall report all facts relating to any such suspension for the action of the council, and upon a majority vote of the entire council, and the approval of the mayor, the removal of any municipal officer shall be effected. He shall have power to suppress mobs, riots, and disorder within the city, and if he deems it necessary to call out the civil posse, or call upon the governor for the aid of the militia for these purposes. He shall supervise the conduct of all municipal officers and shall bring any neglect of official misconduct on their part to the notice of the city council for its action. He shall preside at all meetings of the city council and sign all warrants for the payment of money drawn on the treasurer by order of the council. He shall sign all commissions, licenses or permits granted by the council. He shall have authority by and with the consent of two-thirds of the members of the city council, to grant pardons and to remit fines and penalties of any person convicted of violating any of the ordinances of the city. In case of tie in any vote or proceding of the city council he shall have the casting vote, but not otherwise. He shall perform such other duties suitable to his office as the council may from time to time require, and which are consistent with this act and the laws of the territory.

President of council

SEC. 368. At the first meeting of the council in each year they shall proceed to elect by ballot from their number a president and vice-president. In the absence of the mayor the president shall preside over the meetings of the council, and during the absence of the mayor from the city, or his inability from any cause to discharge the duties of his office, the said president shall exercise all the powers and discharge all the duties of mayor. In case of the absence or inability of the mayor and president the vice-president shall preside and discharge the duties of said president. The president of the council or vice-president while performing the duties of mayor, shall be styled the acting mayor, and acts performed by him while acting as mayor aforesaid, shall have the same force and validity as if performed by the mayor. Any acting mayor performing the duties of a mayor for a period longer than sixty days shall be entitled to the salary of the mayor. The mayor, president and vice-president of the council shall have the right to administer oaths and affirmations. If more than six months intervene between the time when any vacancy shall or may occur in the office of mayor and the next annual election, the city council shall order an election for mayor by the qualified electors of the city for the unexpired term. The notice and other requirements of the act concerning annual elections in the municipality shall be given and govern all special elections held for mayor or aldermen.

Vacancy in office of mayor.

Ordinance appropriating money

SEC. 369. Any ordinance appropriating moneys shall be subject to the veto of the mayor, and the mayor may veto any single item in any such ordinance, and if such item be not passed over his veto, such item shall be stricken out and shall not be paid by the city.

Veto.

SEC. 370. The mayor shall have power to sign or veto any ordinance passed by the city council. Any ordinance vetoed by the mayor may be passed over the veto by a vote of two-thirds of the whole number of councilmen elected, and shall thereupon take effect, notwithstanding the veto; and should the mayor neglect or refuse to sign any ordinance or return the same with his objections in writing at the next regular meeting of the council, the same shall take effect without his signature.

Police magistrate.

SEC. 371. The police magistrate shall be elected by a plurality of the votes of the electors residing within the limits of the incorporated city in which he is chosen. He shall hold office for one year from and after the first Monday in May after his election. He shall have exclusive jurisdiction to try and determine all actions arising under the ordinances of the city, and in addition thereto shall have the same jurisdiction conferred by law upon the justices of the peace. He shall hold a police court, which shall be open at all times from the hours of 9 a. m. to 4 p. m., except on Mondays and legal holidays, for the trial of causes arising under the city ordinances. If a vacancy occurs in the office of police magistrate, or if he is temporarily absent or incapacitated from discharging the duties of his office, the city council may by ordinance provide that any justice of the peace residing within the city may perform the duties of police magistrate while such vacancy or incapacity continues. The person so appointed shall receive like fees for services during the period he has performed the duties of police magistrate as the police magistrate is by this act or the ordinances of the city authorized to receive.

Salary of magistrate.

SEC. 372. The police magistrate of a city of the first class shall be paid a salary to be fixed by ordinance, in full compensation for services rendered the city not exceeding fifteen hundred dollars per annum and of cities of the second class a salary not exceeding six hundred dollars per annum, and shall be entitled to receive the fees which now are, or may hereafter be allowed by law to justices of the peace in all civil cases, and in criminal actions or proceedings arising under the laws of the territory when acting as a justice of the peace.

Salary of mayor and aldermen.

SEC. 373. The mayor of each incorporated city of the first class shall be entitled to receive a salary not exceeding one thousand dollars per annum, to be fixed by ordinance, and each alderman shall be allowed and paid not exceeding five dollars per diem for each day of session held by the city council: *Provided*, No alderman shall be paid for more than five days services during any one month. *And provided further*, The mayor and aldermen of cities of the second class and towns shall receive no salary or compensation.

SEC. 374. The first common council elected in each incorporated city of the first class, shall fix by ordinance the compensation or salary which the mayor and the aldermen shall receive, subject to the limitation fixed by section 373. The rate so fixed shall be that which the mayor and aldermen elected at the first annual election thereafter shall be entited to receive. The salary or compensation thereafter to be paid to the mayor or aldermen shall not be increased during the term for which they have been elected.

Council to fix salaries.

SEC. 375. The common council shall have power at any time to require other and further duties to be performed by any officer whose duties are herein prescribed, not inconsistent with this act; to appoint such other officers as may be necessary to carry into effect the provisions of this act, and to prescribe their duties unless otherwise provided for, but no officer elected or appointed by the common council, or appointed by the mayor as hereinbefore provided shall be appointed for a longer term than one year, and until his successor is elected or appointed and duly qualified. The common council shall have the power, unless herein otherwise provided, to fix the compensation of all officers elected or appointed under this act, and such compensation shall be fixed by resolution, and in regard to all offices created by this charter, the compensation shall be fixed within three months from the first organization and meeting of the common council. After the first year the compensation of officers shall be fixed for the fiscal year at the last regular meeting of the common council preceding the annual election, except for such officers as may hereafter be created, in regard to which the compensation shall be fixed at the time of the creation of such office. Nor shall the compensation of any officer, after having been fixed, be increased during the term for which such officer was elected or appointed. No officer elected or appointed under the provisions of this charter shall be a party to or interested in any contract in which the city or town is interested, made while such officer is holding office.

Other duties may be imposed on officers

Tenure of office

No interest in contracts

SEC. 376. No vote of the common council shall be reconsidered or rescinded at a subsequent meeting unless at such subsequent meeting there shall be present and voting at least three-fourth's of the whole council.

Reconsideration

SEC. 377. It shall hereafter be the duty of the county assessor, in each county of the territory, in making his return of property subject to taxation, to desinate on the assessment roll the real and personal property, each separately and distinctly, situated within the limits of any incorporated city or town within the county.

Duties of county assessor

Same.

SEC. 378. The county assessor shall at the time of filing his return of property, file with the clerk or recorder of each incorporated city or town, a duplicate return of all property situate within the limits of any city or town in such county, and for such duplicate return so furnished, the assessor shall be entitled to a reasonable compensation therefor, to be allowed and paid by said city or town. The council or board of aldermen of the city or town shall authorize one or more or their number to appear before the county commissioners, sitting as a board of equalization, and recommend such charges, amendments, or additions to the assessment made by the county assessor of property situate within the limits of the city or town as they deem just and equitable.

Levy and collection of taxes

SEC. 379. The council shall on or before the fifteenth day of September, in each year, by resolution, determine the amount of corporation taxes to be levied and assessed on the taxable property in such city for the current year, and the city clerk shall at once certify to the county clerk a copy of such resolution, together with a statement of delinquent special assessment taxes, and the county clerk shall place all such taxes on the tax list of the county, and all such taxes shall be collected and the payment enforced with and in like manner as territorial and county taxes are paid and the payment thereof enforced, and the county treasurer, upon the order of the county clerk, shall pay such taxes over to the municipal treasurer immediately after each settlement, and such settlement shall be made on the first Monday in each month.

Fiscal year Annual appropriation bill.

SEC. 380. The fiscal year of all cities and towns organized under this act shall begin on the first Monday of May in each year, unless a different date be fixed by ordinance. The city council or board of aldermen shall, in the last quarter in each fiscal year, pass an ordinance to be known and termed "The annual appropriation bill for the city of . . . . . . or town of . . . . for the year . . . ." By said annual appropriation bill they shall appropriate such money as they deem necessary to defray the expenses and liabilities of the city or town for the next fiscal year. They shall specify in said bill the amount appropriated to each separate object, and the salary and compensation to be paid to each officer of the corporation. During the ensuing year no further or different appropriation shall be made for any of the objects or purposes mentioned therein, except upon the vote of two-thirds of the members of the city council or board of aldermen.

Fines and costs

SEC. 381. All fines and penalties imposed and collected by the police magistrate or justice of the peace for the infraction or violation of any of the ordinances of any city or town, shall be paid by him to the city treasurer. He shall take receipt therefor, and shall render to the city council a monthly statement, showing the amount of all fines, penalties, and costs collected, and the person to whom paid. The police magistrate shall tax the costs to the person found guilty, and may enforce any judgment rendered thereon by execution or imprisonment, as authorized by this act. The costs in all cases arising under the ordinances of the city shall be the same as now are or may hereafter be allowed by law to justices of the peace for prosecution arising under the criminal laws of the territory.

Powers of council.

SEC. 382. The city council shall possess all the powers granted by this act and such other and necessary powers as shall be necessary and proper for carrying into effect the powers herein granted.

Organization and meetings of council

SEC. 383. The members of the city council or aldermen of any town shall meet and organize on the first Monday of May in each year after their election. They shall hold stated meetings, and the mayor may call special meetings at the request of three aldermen by notice to each of the members personally, or left at their usual place of abode.

Classification

SEC. 384. Every municipal corporation created under this act having a population of five thousand or upwards, shall be a city of the first class; and every municipal corporation having a population of fifteen hundred and less than five thousand, shall be a city of the second class; and every municipal corporation having a population of over three hundred and less than fifteen hundred, shall be a town.

Corporate authority of cities

SEC. 385. The corporate authority of cities shall be vested in a mayor and in a board of aldermen, to be denominated the city council, and in such other officers as are herein mentioned or authorized to be elected or appointed by the city council.

Same of towns

SEC. 386. The corporate authorities of incorporated towns organized under this act shall be vested in a mayor and six aldermen, one of whom shall be the recorder of the town. They shall be elected by the qualified voters of the town as prescribed by this act, and when elected and organized they shall appoint one of their number recorder of the town.

Election in towns.

SEC. 387. The board of aldermen of any incorporated town organized under this act shall provide by ordinance for the election of a treasurer, town marshal, one or more policemen, and such other officers as they may deem necessary for the good government of the town. They shall prescribe their duties and fix their compensation. The election of officers shall be at the first regular meeting after the election of the mayor and aldermen provided by this act. The persons so elected shall hold office until their successors are appointed or qualified, unless sooner removed by the board of aldermen.

Officers of towns; how suspended.

SEC. 388. All officers elected by the board of aldermen of any incorporated town may be suspended or removed by a vote of a majority of the aldermen and approved by the mayor. In all cases of a tie vote the mayor shall have the casting vote, but not otherwise. The removal of the mayor or any alderman from the town in which he may have been elected shall work a vacancy in his office, and the remaining members of the board shall fill said vacancy by the election of some qualified person until the next municipal election.

Justice of the peace

SEC. 389. The board of aldermen may by ordinance designate a justice of the peace residing within the town, with jurisdiction to try and determine all cases arising under the ordinances of the town, and to punish violation of any ordinance as prescribed therein, subject to the provisions and limitations of this act.

Duty of sheriff and constable

SEC. 390. Any constable or the sheriff of the county is hereby authorized, and it is hereby made their duty to serve all writs, process issued by any justice of the peace under the town ordinances, in like manner as they are required to execute like process under the laws of the territory in civil and criminal cases arising thereunder, and they shall be entitled to like pay for their services as are given for the same services under the territorial law.

Law applicable.

SEC. 391. The provisions of this act when applicable shall be applied to incorporated towns organized thereunder.

Special charter may be abandoned.

SEC. 392. Any city or town incorporated by special charter may abandon its organization and reorganize under the provisions of this act by pursuing the course hereinafter prescribed.

Proceedings to abandon special charter and organize under this act.

SEC. 393. Upon the petition of two hundred citizens, residents, freeholders and qualified electors of any municipal corporation existing in this territory addressed to the mayor of the city or town, praying that the question of organizing under this act be submitted to the qualified voters, residing within the limits of the territory embraced in the new corporation proposed to be formed in its stead. The common council or board of aldermen shall thereupon order an election to be held, at which the question of reincorporation shall be decided. The petition shall be accompanied by a map or plat of the territory to be embraced within the new corporation, and additional territory may be included lying adjacent to or adjoining the boundaries of the existing corporation. If a majority of the qualified voters as defined by this act, and living within the boundaries of the proposed new incorporation shall vote in favor of the reorganization of the city or town under the provisions of this act they shall thereupon be incorporated thereunder in all respects and subject to all the provisions of this act as if originally incorporated thereunder. All the requirements of this act as to notice of the election, the appointment of judges and clerks thereof, the returns of the election, and canvassing the votes given, shall be complied with: *Provided*, The returns of the election shall be made to the mayor of the existing city or town, and not to the county commissioners.

Vote for or against.

SEC. 394. At said election those voting in favor of organizing under this act shall deposit a ballot with the words: "For incorporation under the general law." Those voting against re-organization shall deposit a ballot with the words "Against incorporation under the general law."

If election result for or against re-organization: proceedings

SEC. 395. If a majority of the votes cast at such election be in favor of organizing under this act the council shall call a special election for the election of officers according to its class as defined by this act. Thirty days notice shall be given of said election by posting a copy of said notice in the room or hall used by the council, as the case may be, and by publication of a like notice in a newspaper, if one be published in the city or town. From and after the election of such officers the former organization of such city or town shall be considered as vacated and abandoned, and such city or town shall have all the rights and be subject to all the liabilities of the class to which it belongs, according to the population, as defined by this act. The officers so elected shall hold their office until the next annual election for municipal officers of the city or town, as provided by this act. *Provided*, That if

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a majority of the votes cast at such election shall be against disincorporation, the question shall not be again submitted to a vote within six months thereafter.

Corporate property.

SEC. 396. All rights of property, of every description, which were vested in any municipal corporation under its former organization shall be deemed and held to be vested in the new corporation, under the reorganization herein contemplated, and no right or disability in favor of or againgt the former corporation, and no suit or prosecution of any kind shall be affected by the new corporation, but the same shall exist and be in force against the new corporation *Provided*, That where a different remedy is given by this act, which can be made properly applicable to any right existing at the time the change was made, the new right or remedy so given shall be pursued.

Discontinuance of corporation.

SEC. 397. Whenever one-fourth of the legal voters of any city or town, incorporated in this territory, under this or previous acts, shall petition the county commissioners of the county wherein the corporation is situated, for the discontinuance of the same, the commissioners shall cause to be published for at least thirty days, a notice stating that the question of discontinuing the corporation will be submitted to the legal voters of the same at the next annual corporation election. The form of the ballot to be used at said election shall be: "For continuing the incorporation" and "Against continuing the incorporation."

Same.

SEC. 398. If two-thirds of all the legal voters at said election shall be cast against continuing the incorporation it shall be discontinued; *Provided*, That no corporation shall be discontinued until such corporation has made provision for the payment of all its indebtedness and the faithful performance of all its contracts and obligations, and shall also have levied the requisite tax therefor.

Same.

SEC. 399. The vote for the purpose of continuing or discontinuing municipal corporations shall be taken, canvassed, returned and declared in the same manner as are votes in other municipal elections; the returns thereof to be made to the county commissioners.

Same.

SEC. 400. The books, documents, records, papers, and corporate seal of any city or town so discontinued shall be deposited with the probate clerk or judge of the county for safe-keeping and reference, and all court records of the town or city magistrate or other officer shall be deposited with some justice of the peace of the precinct, who shall have authority to execute and complete all unfinished business standing on the books for or against the said corporation.

Same.

SEC. 401. Whenever the incorporation of any city or town shall have been discontinued under the provisions of the preceding sections, the county clerk of the county wherein such corporation is situate shall publish the fact for thirty days in some paper, if one is published in the county, and if none is published therein shall post notice for a like time in some public place within the county and certify the fact of the discontinuance of the corporation to the secretary of the territory.

Payment of indebtedness

SEC. 402. For the payment of its indebtedness the city or town shall issue warrants in cases where there is no money in the treasury, and the county collector shall collect the tax which shall have been levied as he collects other taxes, the same to be applied in payment of the warrants mentioned, and any surplus which shall exist after the payment of all warrants drawn shall be placed to the credit of the school fund of the district in which such city or town was situated.

Collection of taxes

SEC. 403. Whenever any city or town abandons its former incorporation and incorporates under this act, it shall be the duty of the treasurer of the new incorporation to collect all taxes of the disincorporated city or town which are due, in like manner as he is required by this act, and the ordinances of the new incorporation to collect like taxes.

By-Laws and ordinances of re-organized city or town.

SEC. 404. Whenever any city or town incorporated previous to the taking effect of this act shall reorganize under this act the by-laws and ordinances adopted and in force at the time of the reorganization shall continue in force until altered, amended or repealed by the city council or board of aldermen, under the new organization.

Re-organization of town.

Sec. 405. Any incorporated town organized under this act or incorporated under any general or special law, having over fifteen hundred inhabitants, upon the petition of one hundred citizens residents and qualified electors residing therein, addressed to the county commissioners of the county may become reorganized as a city upon complying with the conditions herein contained. The persons signing said petition shall accompany the same by a plat of the town with such adjacent and contiguous territory as by said petition it is proposed to include within the limits of the proposed city. Upon receipt of the petition, map and plat the county commissioners shall file the same in the office of the county clerk, and the same shall be subject to the inspection of all persons interested therein.

Census

Sec. 406. The county commissioners shall thereupon order a census to be taken of the permanent inhabitants residing within the limits of the territory so proposed to be incorporated into a city, and shall appoint a suitable person to take said census and return the list to them, and upon the receipt thereof shall file the same in the office of the county clerk. If by the return and lists it shall appear that fifteen hundred permanent inhabitants reside within the limits of the proposed city, the county commissioners shall thereupon declare the result and such proceedings in all respects shall be had for the incorporation of said city as are required by sections 316, 317 and 318 of this act. When so complied with the incorporation of the city shall become complete, and thereafter all the provisions of this act relating to cities originally incorporated thereunder shall be applicable to the city so reorganized.

Other proceedings.

Complaint

Sec. 407. In any suit brought for the recovery of any fine or penalty under any ordinance of a city or town, it shall be sufficient to state in the complaint or affidavit, the title of the ordinance without reciting the same at length; the affidavit shall state, in addition, the nature and character of the offence charged.

May purchase or lease canal, etc

Sec. 408. Any incorporated city or town in this territory organized under this act, shall have power to purchase or lease any canal or ditch already constructed, or any water right, and all the rights, privileges and franchises pertaining thereto, and hold and operate the same in the same manner as the persons or corporation from whom the same may be purchased might do; *Provided*, such purchase or lease shall be made for the purpose of supplying water for the use of the city or town, and *Provided*, *further*, That a majority of the qualified electors of the city or town at any regular election, or at a special election held for the purpose, shall vote in favor of such lease or purchase.

Same

Sec. 409. Any city or town making such lease or purchase shall assume all obligations of the owner or owners of the ditch or canal so leased or purchased, as they exist by law, and shall have power to repair, improve, or enlarge the same, and may levy and collect taxes for this purpose in the same manner as other taxes are levied and collected under the municipal corporation; the management of such ditch or canal to be under the control of the city council or aldermen of the town, as the case may be; *Provided*, That nothing contained in this section shall be deemed or construed as making the city or town liable upon any contract, or upon any pecuniary liability of the person or corporation from whom the ditch or canal or the water right is leased or purchased.

Municipal bonds

SEC. 410. It shall be the duty of the city council or board of aldermen of any city or town having a floating indebtedness exceeding ten thousand dollars, upon the petition of one hundred of the electors of said city or town, who shall have paid taxes upon property assessed to them, in said city or town in the preceding year, to publish for the period of thirty days in a newspaper published within said city or town, a notice requesting the holders of the warrants of such city or town, to submit in writing to the city council or board of aldermen within thirty days from the date of the first publication of such notice, a statement of the amount of warrants of such city or town, with accrued interest thereon, which they will exchange at par for the bonds of such city or town, to be issued under the provisions of this act, taking such bonds at par. It shall be the duty of such city council or board of aldermen, at the next general election, occurring after the expiration of thirty days from the date of the first publication of the notice aforesaid upon the petition of one hundred electors of such city or town, who shall have paid taxes upon property assessed to them in said city or town the preceding year to submit to the vote of qualified electors of such city or town, who shall have paid taxes upon property assessed to them, in said city or town, in the preceding year, the question whether the city council or board of aldermen shall issue bonds of such city or town, under the provisions of this act, in exchange at par for warrants of such city or town, issued prior to the date of the first publication of the aforesaid notice, or they may submit such question at a special election, which they are hereby empowered to call for that purpose, at any time after the expiration of thirty days from the date of such publication of the notice aforementioned on the petition of one hundred qualified electors as aforesaid, and they shall publish for the period of at least thirty days immediately preceding such general or special election, in some newspaper published in such city or town, a notice that such question will be submitted to the duly qualified electors aforesaid at such election. The treasurer of the city or town shall make out and cause to be delivered to the judges of election in each election precinct, prior to said election, a certified list of the tax-payers of such city or town who shall have paid taxes upon property assessed to them in the preceding year, and no person shall vote upon the question of funding the city or town indebtedness unless his name shall appear upon such certified list, nor unless he shall have paid all city or town taxes assessed against him in such city or town the preceding year. If a majority of the votes lawfully cast upon the question of such funding of the city or town indebtedness shall be for funding such indebtedness, the city council or board of aldermen may issue to any person or corporation holding any city or town warrant or warrants, issued prior to the date of the first publication of the aforementioned notice, coupon bonds of such city or town in exchange therefor at par. No bonds shall be issued of less denomination than one hundred dollars, and if issued for a greater amount, then for some multiple of that sum, and the rate of interest shall not exceed seven per cent. per annum, the interest to be paid semi-annually at the office of the city or town treasurer, such bonds to be payable at the pleasure of the city or town after two years from date of their issuance, and not later than ten years after date of issue. The whole amount of bonds issued under this act shall not exceed the sum of the city or town indebtedness at the date of the first publication of the aforementioned notice.

Same.

SEC. 411. All bonds issued under the provisions of this act shall be signed by the mayor and countersigned by the city clerk or recorder, and bear the seal of the city or town, and shall be numbered and registered in a book kept for that purpose by the city clerk, and also by the city or town treasurer.

Same.

SEC. 412. The city council or board of aldermen shall prescribe the form of such bonds and the interest coupons attached, and provide for the half-yearly interest, when the same shall be payable. For this purpose they shall cause to be levied and collected annually a sufficient tax to fully discharge said interest and the redemption of the principal of said bonds as it shall become due. They are hereby empowered to cause to be annually levied at the end of one year after the date of such bonds, by a tax upon all taxable property in the city or town, a fund equal to ten per cent. of the whole amount of such bonds issued and outstanding, which fund shall be a redemption fund, and shall be kept and paid out by the city or town treasurer in the redemption of any interest remaining due, and on the maturity thereof for the redemption of the principal on said bonds; such taxes to be levied and collected as other city and town taxes.

Redemption of bonds.

SEC. 413. It shall be the duty of the city or town treasurer, when he has sufficient redemption funds on hand, to pay in full the principal and interest of any such bonds, the same to be paid in the order of their number, and when paid the treasurer shall certify his action to the city council or board of aldermen, who shall cancel the bonds paid, so that the same can be identified, and cause a record of the payment to be made upon a book of registration of said bonds kept by the city clerk and by the city treasurer. When it is desired to redeem any such bonds, the city or town treasurer shall cause to be published for thirty days in some newspaper published in said city or town, a notice that certain city or town bonds, describing them by numbers and amounts, will be paid on presentation, and at the expiration of the thirty days of notice the bonds designated in said notice shall cease to bear interest.

Funding indebtedness.

SEC. 414. All qualified voters on the question of funding city and town indebtedness, shall use a ballot with the words "For funding city" or "town indebtedness" or "Against funding the city" or "town indebtedness." The vote upon said question shall be canvassed in the manner prescribed by this act for the vote upon city and town officers. If it shall appear that a majority of the votes cast upon the question so submitted are in favor of funding the debt, the city council or board of aldermen shall be authorized to carry out the provisions of this act. The judges of election shall make and certify to the city or town clerk or recorder a separate list of the names of the electors voting on the question of the funding said debt. As soon as practicable after such election, if a majority shall have declared in favor of funding the indebtedness, the officers herein mentioned shall proceed to execute the provisions of this act, as prescribed in the preceding sections.

Limit of taxation.

SEC. 415. The amount of corporation taxes to be assessed and levied in any one year on the taxable property of any city or town shall not exceed one per centum on the assessed valuation of such property, except to pay any judgment against a city or town.

Transcript and payment of judgment.

SEC. 416. Whenever a final judgment shall be obtained against any such corporation, the judgment creditor, his assigns or attorney, may file with the city clerk a certified transcript of such judgment, or of the docket thereof, together with his affidavit showing the amount due thereon, and all payments, if any, and that the judgment has not been appealed from or removed to any other court; or if so appealed or removed, has been affirmed; and thereupon the council shall cause the city clerk to certify to the county clerk the amount thereof, with interest from date of its rendition to the time when the warrant for collection will expire upon the taxable property of such corporation. The county clerk shall place the same on the next tax roll against the taxable property of said city or town, and the same shall be collected and returned with other city taxes and paid to the party entitled thereto.

Auditing.

SEC. 417. No account or demand against a city or town shall be paid until it has been audited and allowed and an order drawn on the treasurer therefor. Every such account shall be made out in items and verified by affidavit, indorsed or annexed, that the sum is correct and no part thereof paid. After auditing, the council shall cause to be endorsed by the clerk over his hand on each account the words "allowed" or "disallowed," as the fact is, adding the amount allowed, if any, and specifying the items or parts of items disallowed, if disallowed in part only. The minutes of the proceedings of the council shall show to whom and for what purpose every such account was allowed, and the amount. Every such account or demand allowed in whole or in part shall, with the affidavit thereto, be filed by the clerk, and those of each year consecutively numbered, and have endorsed the number of the order on the treasurer issued in payment, and the clerk shall take a receipt thereon for such order.

No debt to be created except as herein provided.

SEC. 418. No city, or any officer thereof, shall have power to issue any time or negotiable order, or borrow money, except in the manner and for the purposes expressly declared by statute.

Eminent domain.

SEC. 419. The city council shall have power to condemn and appropriate private property for opening, establishing, widening or altering any public street, avenue, alley, lane, park, sewer, waterway, or for any other public use, and the resolution or ordinance of the city council ordering, directing, authorizing or providing for the taking of private property for any such use shall be conclusive as to the necessity for such taking.

What estates may be taken.

SEC. 420. The following shall be a classification of the estates and rights in lands subject to be taken for public uses by or on behalf of said city:

First. A fee simple when taken for public buildings or grounds, or for permanent improvements or waterways.

Second. An easement when taken for any other use.

Kinds of property taken

SEC. 421. All classes of private property may be taken for the public uses in this act mentioned.

Compensation to owner

SEC. 422. In all cases where the city council by resolution or ordinance has authorized, or shall authorize, the taking of private property for public use, just compensation shall be paid to the owner, or owners, for the property so taken; and no final order authoriizing the said city to enter upon said lands shall be made, without providing that before the condemnation shall take effect the compensation adjudged to be paid to the owner, or owners, shall be paid to such owner, or owners, or deposited in court subject to his or their order, but at any time after service of notice of the application hereinbefore mentioned, the court or judge may authorize said city, if already in possession, to continue therein, and if not in possession then to take possession of and use the property during the pendency and until the final conclusion of such procceedings, and may stay all proceedings against said city on account thereof.

Eminent domain: how right of exercised

SEC. 423. If the owner or claimant of such lands or other property and the mayor or other officer authorized by the city council cannot agree as to the damages or compensation to be paid for such property, the amount shall be determined by the appraisal of three disinterested commissioners who may be appointed upon application of the mayor or other authorized officer to the district court, or the judge thereof, or in the absence of such judge then to the judge of the probate court in and for said county. Said commissioners shall hear such legal testimony as may be offered by any party to the proceedings, and for that purpose shall be authorized to administer all necessary oaths, and thereupon must ascertain and assess: *First*, The value of the property sought to be condemned, and all improvements thereon pertaining to the realty, and of each and every separate interest or estate therein. If it consists of different parcels the value of each parcel, and each estate or interest therein, shall be separately assessed.

Second. If the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion (not) sought to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvement or exercise of the use in the manner proposed by the city council.

Third. Separately how much the property not sought to be condemned, and each estate or interest therein will be benefitted if at all, by the construction of the improvement or exercise of the use proposed by the council; and if the benefit shall be equal to the damages assessed under subdivision 2 of this section, the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefit shall be less than the damages so assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value.

Fourth. As far as practicable the compensation or damages shall be assessed for each source of damage separately.

Valuation

SEC. 424. For the purpose of assessing compensation or damages the right thereto shall be deemed to have accrued at the date of the application, and its actual value at that date shall be the measure of compensation for all property actually taken or to be taken, and the basis of damages to property not actually taken, but injuriously affected. If an order be made letting said city into possession, the compensation and damages awarded shall draw legal interest from the date of such order. No improvement put upon the property subsequent to the date of the service of notice of the application for appointment of commissioners shall be included in the assessment of compensation or damages.

Order of court.

SEC. 425. Upon the return into the said district court of such appraisement, and upon the payment to the clerk thereof the amount so awarded by the commissioners for the use and benefit of the owner of the property taken, said city shall acquire full title to the same for the purposes aforesaid and the court or judge shall make such order as may be proper in the premises, a certified copy of which order shall be recorded in the office of the county recorder, and shall have the same force and effect as a conveyance.

Payment of damages

SEC. 426. The city council shall, in the ordinance or resolution condemning property, provide the method of paying the compensation or damages, and also shall provide what part if any thereof, shall be paid by the city.

No bond required of city.

SEC. 427. The city shall not be required to give any bond, undertaking or other security for costs, or on attachment, injunction or appeal in any suit prosecuted or defended in its name.

Taxes for payment of damages.

SEC. 428. For the purpose of payment of the expenses, including all damages and costs incurred by the taking of private property, and of making any improvement mentioned in the preceding section, the city council may by resolution levy and assess the whole or any part, not less than half of such expenses as a tax upon such property as they shall determine is specifically benefited thereby, making therein a list thereof, in which shall be described every lot or parcel of land so assessed with the name of the owner thereof, if known, and the amount levied thereon set opposite. Such resolution signed by the mayor and clerk shall be published once in each week for two weeks in a newspaper published regularly in such city or if there be no such newspaper, three copies thereof shall be conspicuously posted by the clerk, and a notice therewith that at a certain time therein stated the council will meet at their regular place of meeting and hear all objections which may be made to such assessment or any part thereof. At the time so fixed the council shall meet and hear all such objections, and for that purpose may adjourn from day to day, and may, by resolution, modify such assessment, in whole or in part. At any time before the first day of August thereafter any party liable may pay any such tax to the city treasurer. On such first day of August, if any such tax remains unpaid the clerk shall certify a copy of such resolution to the county clerk, with a certificate of the city treasurer annexed, showing what taxes thereby levied remain unpaid, and the county clerk shall put the same with five per centum additional upon the tax roll, in addition to and as part of all other city taxes therein levied on such land, to be collected therewith.

Vacation of street.

SEC. 429. Upon the petition in writing of all owners of lots or lands on any street or alley in such city, and not otherwise, the city council may discontinue such street or alley, or any part thereof. At least one week before acting on such petition, the council shall cause a written or printed notice to be posted in three public places in such city, stating when the petition will be acted on, and what street or alley, or part thereof, is proposed to be vacated.

Improvement of streets etc.

SEC. 430. The city council may cause any street, or any part of any street, not less than sixteen rods in length, to be graded, paved, macadamized, or otherwise improved, or any sidewalk or gutter to be built upon a petition therefor, in writing, signed by at least a majority of all the resident owners of real estate bounding both sides, and the resident owners of at least one-half the frontage of such street, or part of street, to be improved, or order any sidewalks or gutter on one side of the street to be built, on the petition of a majority of such resident owners and of the resident owners of at least one-half of the frontage of such side, and may order any sidewalks or gutter, previously built, to be put in repair, when necessary, without petition. For the purpose of so improving any street or building, or repairing any sidewalk or gutter, the city council may levy and cause to be collected, upon the lots, tracts, or parcels of ground on such street or part of street, improved or on the side thereof where such sidewalk or gutter is built, and upon the owners thereof, a tax sufficient to pay the expenses of constructing such improvement as ordered, opposite such property, to the center of the street, or such proportion thereof, not less than half, as they shall deem justly assessable to such property, if they shall think the whole ought not to be assessed, in which case the remainder shall be paid from the city treasury. Every such tax for repairs shall be for the entire cost of the repairs in front of the property so assessed. If any tax levied under this section shall prove insufficient to pay the cost, or proportion thereof, assessed to such property, the city council may levy an additional tax thereon to make good such deficiency.

Collection and expenditure of street taxes.

SEC. 431. Whenever the city council shall levy any such tax, as specified in the preceding section, they shall make out and deliver to the street commissioner of such city a list of persons and a description of the property taxed, together with a warrant for the collection and expenditure of said tax, and thereupon the street commissioner shall notify the persons named in such tax list by publishing a notice two weeks in some newspaper published in said city, if there be one, or by posting notices in three or more places in such city, and shall specify in such notice at time or times, not less than twenty days, nor more than forty days, from the date thereof, when the persons charged with taxes in such list may pay their taxes in labor, material, or money, and the persons charged such tax may at such time and place, as may be required by the said street commissioner, pay their taxes in labor [or] material. *Provided*, The labor and material offered in payment of such taxes are such as may be required by the said street commissioner, and done and furnished to his satisfaction and at the market rates then prevailing. The street commissioner shall be provided with a memorandum book by the city clerk, in which he shall keep an account of all moneys coming into his hands by virtue of his office, the amount received and disbursed by him, the name of every person from whom money or labor is due, the amount paid in money and labor, and an account of all expenditures by him made as street commissioner. The book containing the amounts so kept shall at all times, when required, be furnished for the inspection of the city council, and ten days before the expiration of his term of office shall be handed to the city clerk to be filed in his office for the inspection of taxpayers in his district.

Sales for delinquent taxes.

SEC. 432. At the expiration of forty days from the date of said notice given by the said street commissioner, he shall make out and deliver to the county clerk of the county in which such city is situated, a certified list of the lots, pieces, or tracts of land in said city upon which any such tax remains unpaid, with the amount of such delinquent tax upon each of said lots or parcels of land; and if such list be returned to such county clerk before the completion of the tax roll of said county for the same year, the said clerk shall add the said delinquent taxes to said tax roll opposite the description of the proper lots, pieces, or parcels of land therein, and the said delinquent taxes with and in the same manner as the county taxes. If such list should be returned to the county clerk, after the completion of the tax roll, and before the county treasurer's return of delinquent taxes, he shall deliver the said list to the said treasurer, who shall collect the same with other taxes in such city, and add what remains uncollected of said taxes to his delinquent taxes, and shall collect the same, or sell the lots or lands for such delinquent taxes; and all proceedings in relation thereto shall be in all respects as in the case of other lands sold for delinquent taxes. Every county treasurer who shall collect or receive any moneys on account of such delinquent taxes, shall pay the same to the treasurer of the proper city and take duplicate receipts therefor, and file one of said receipts with the county clerk.

Work at expense of city.

SEC. 433. Whenever any lot, tract, or parcel of land, shall have been returned delinquent for any tax as hereinbefore provided, the city council may cause their work to be done at the expense of the city, to be reimbursed by such tax when collected.

Repairs of sidewalks or gutters.

SEC. 434. Whenever the public convenience or safety shall require any sidewalks or gutter, in case of injury or defect, to be immediately repaired, and the cost of repairs will not exceed ten dollars, the street commissioner may give written notice to the parties, or their agents, subject to tax for the repairs thereof, if known and residing in said city, and if unknown or not residents thereof, then may post written notices in three public places in such city, that unless such sidewalk or gutter, therein to be specified, be repaired to the satisfaction of the street commissioner within three days thereafter, he will repair the same at the expense of the property; and if the same in such time be not repaired, such commissioner shall so repair and return the tax as a delinquent tax on such property, and the same shall be collected as other delinquent taxes hereinbefore provided.

No road district in city.

SEC. 435. No parts of the streets of any city shall be in any road district established by the county commissioners, nor be under the control of any county officers. No overseer of highways shall be elected in or for any such city, but the poll tax shall be collected as hereinafter provided, and shall be expended on the streets, highways and public places governed by the city council and officers of their appointment.

Poll tax.

SEC. 436. On or before the twentieth day of May in each year the clerk shall make a list of the names of all male persons over the age of twenty-one years, with the amount of poll tax, which shall be the same as in counties, and submit the same to the city council for correction. When such list is correctly made out, and on or before the first day of June in each year, the council shall by order direct the same to be delivered forthwith to the treasurer for collection. The treasurer shall forthwith proceed to the collection of such tax and shall demand the same, once of each person named in the list, and if any person neglects to pay the same for ten days thereafter, then such treasurer shall, in the name of the city, sue for and collect such tax, with fifty per centum damages on the same, with costs of suit, before the police justice of such city; and in default of payment of such judgment, execution shall issue against the defendant as in case of tort, and the first process in such action shall be by summons; but the city council may exempt from the payment of such tax all persons belonging to any fire company, or any person who is poor and not able-bodied, when they deem it proper to do so; and the treasurer, while the said list is in hands for collection, may put upon the same the names of all such persons liable to such tax as have been omitted therefrom, who shall be liable the same as if their names were originally placed on such list.

Expenditure of poll tax

SEC. 437. Such money when collected shall be expended in the improvement of the streets, the making and improvements of sidewalks, and the setting out of shade and ornamental trees in such cities, and if such poll-tax shall, in the opinion of the council, be insufficient for such purpose, they may levy and cause to be collected a sufficient additional sum therefor on the taxable property of such city, in the manner hereinbefore provided; and all such taxes shall be expended under the direction of the city council. The council may also expend and lay out on the highways, or any of them leading into such city, not to exceed one-third of the tax so assessed in any one year.

Contracts over $500

SEC. 438. All contracts for the performance of any work in any such city, exceeding five hundred dollars, shall be let by the city council to the lowest responsible bidder in such manner as they may prescribe, but this provision shall not apply to contracts for the employment of professional services.

No repeal unless so set forth

SEC 439. No law contravening the provisions of this act shall be considered as repealing or modifying the same, unless such purpose be expressly set forth in such law.

Repealing section

SEC. 440. An act approved February 17, 1881, entitled "An act to provide for municipal corporations in the Territory of Montana," and all other laws in conflict with this act are hereby repealed: *Provided, however*, That all special charters for the incorporation of cities or towns under the laws of this territory shall remain in full force and effect unless rescinded in pursuance of the provisions of this act.

NOTE—Sections 315 to 440 both inclusive, are in their order respectively sections 1 to 126 both inclusive, and comprise all of "An act relating to the formation of municipal corporations," approved March 10, 1887

CHAPTER XXIII.

REGISTRATION OF VOTERS IN INCORPORATED CITY OR TOWN.

Sec. 441. Registration of voters.

Registration of voters.

SEC. 441. It shall be lawful for the city council of any incorporated town or city to provide by ordinance for the registration of voters and to provide that no person shall vote at any general or special election held in pursuance of the charter or ordinances of such city unless he shall have been first registered in accordance with the provisions prescribed and ordained by the city council of such city; but this act shall not be construed to authorize the city council of any city to change the qualifications of voters except as herein provided.

NOTE —Section 441 is section 1 and comprises all of "An act concerning the registration of voters in incorporated cities," approved March 10, 1887.

CHAPTER XXIV.

FOREIGN CORPORATIONS.

Sec. 442. To file articles of incorporation or charter, and appoint resident agent.
Sec. 443. Consent of agent to act to be filed.
Sec. 444. Penalty for failure to comply.
Sec. 445. Annual report to be filed.

Ex. ses. p. 8.

To file copy of charter and appoint agent.

SEC. 442. All foreign incorporations or joint stock companies, organized under the laws of any state or territory of the United States, or by virtue of any special act or acts of the legislative assembly of any such state or territory, or of any foreign government, shall, before doing any business of any kind, nature, or description whatever, within this territory, file in the office of the secretary of the territory, and in the office of the county recorder of the county wherein they intend to carry on or transact business, a duly authenticated copy of their charter, or certificate of incorporation, and also a statement, to be verified by the oath of the president and secretary of such incorporation, and attested by a majority of its board of directors showing:

First. The name of such incorporation and the location of its principal office or place of business without this territory; and if it is to have any place of business or principal office within this territory, the location thereof.

"Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Before any foreign corporation shall begin to carry on business in this state, it shall, by its certificate, under the hand of its president, and seal of such company, file in the office of the Secretary of State, designate an agent, who shall be a citizen of this State, upon whom service of summons, and other process may be made. Such certificate shall also state the principal place of business of such corporation in this State. Service upon such agent shall be sufficient to give jurisdiction over such corporation to any of the courts of this State.

Section 2. If any such foreign corporation shall fail to comply with the provisions of the foregoing section all of its contracts with the citizens of this State shall be void as to the corporation, and no court in this state shall enforce the same in favor of the corporation.

Section 3. Any foreign corporation that has heretofore engaged in business or made contracts in this State, may, within ninety days from the passage of this act, file such certificate with the secretary of State; and thereupon all their acts and contracts done and made before this act goes into effect are hereby declared as if said certificate had been filed before they began business in this State.

Section 4. Chap. XXIV, Compiled Statutes of the State of Montana, and all laws and parts of laws in conflict herewith are hereby repealed."

Approved and went into Effect 8 Mch. 1893

Second. The amount of its capital stock.

Third. The amount of its capital stock actually paid in money.

Fourth The amount of its capital stock paid in any other way, and in what.

Fifth. The amount of the assets of the incorporation and of what the assets consists, with the actual cash value thereof.

Sixth. The liabilities of such incorporation, and if any of its indebtedness is secured, how secured, and upon what property.

Such incorporation or joint stock company, shall also file at the same time, and in the same offices, a certificate, under the seal of the corporation, and the signature of its president, vice-president, or other acting head, and its secretary, if there be one, certifiying that the said corporation has consented to be sued in the courts of this territory, upon all causes of action arising against it in this territory, and that service of process may be made upon some person, a citizen of this territory, whose name and place of residence shall be designated in such certificate, and that process, when so served upon such agent, shall be taken, deemed, and held to be as valid to all intents and purposes as if served upon the company in the state or territory under the laws of which it is organized.

Consent of agent, etc

SEC. 443. The written consent of the person so designated to act as such agent shall also be filed in like manner, and such designation shall remain in force until the filing in the same offices of a written revocation thereof, or of the consent, executed in like manner. The person designated may, from time to time, change his place of residence or office to some other place within the territory by a writing executed by him and filed in like manner. An exemplified copy of a designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof and conclusive evidence of the authority of the officer executing it.

Penalty

SEC. 444. All foreign incorporations now doing business within this territory shall, within four months from and after the publication of this act in the newspaper having the contract to do the public printing in this territory, file in the office of the secretary, and in the office of the county recorder of the county wherein they are respectively doing business, the statement and certificate required to be filed by section 442 of this chapter. If any such corporation shall fail for more than four months from the said publication hereof so to file said statements and certificates, or any or either thereof; or if any foreign incorporation shall hereafter attempt or commence to do business in this territory without having first filed said statements and certificates required by this chapter, it shall forfeit to the people of Montana the sum of ten dollars for every day it shall so neglect to file the same, and all acts and contracts made by such incorporation, or any agent or agents thereof, during the time it shall so fail and neglect to file said statements and certificates, shall be void and invalid as to such incorporation. It shall be the duty of the district attorney of the county in which the business of such corporation shall be located to sue for and recover in the name of the people of the territory the penalty above provided, and the same, when so recovered, shall be paid into the treasury of such county for the use of the common schools therein.

Annual report.

SEC. 445. Every such incorporation shall, annually and within twenty days from the first day of September of each year, make a report, which shall be in the same form and contain the same information as required in the statement mentioned in section 442 of this chapter, which report shall be filed in the office of the county recorder of the county wherein the business of said corporation is carried on, and a duplicate thereof in the office of the secretary of the territory

NOTE.—Chapter XXIV act of July 22, 1881.

CHAPTER XXV.

CORPORATIONS FOR INDUSTRIAL OR PRODUCTIVE PURPOSES.

Sec. 446. Parties to sign and acknowledge a certificate in writing, setting forth terms of corporation.
Sec. 447. Copy certified by secretary of the territory to be evidence; to have a corporate seal.
Sec. 448. Certificate may designate more than one place of business.
Sec. 449. Certificate to state place of business outside of territory.
Sec. 450. Notice of election; how elected, etc.
Sec. 451. Election not held on day appointed not to dissolve corporation.
Sec. 452. How president designated, and to give security.

Sec. 453. Trustees to demand subscription not exceeding twenty per cent.
Sec. 454. Powers of trustees.
Sec. 455. Stock to be deemed personal property and how transferred.
Sec. 456. Certificate prima facie evidence of incorporation.
Sec. 457. Stocholders individually liable to amount of unpaid stock.
Sec. 458. Trustees to make purchases and issue stock in payment.
Sec. 459. President and trustees to make certificate of amount of stock paid in.
Sec. 460. Report to be published annually.
Sec. 461. Trustees to be liable if they pay dividend while company is insolvent.
Sec. 462. No loan to be made to stockholders.
Sec. 463. Officers liable for signing false report.
Sec. 464. Party pledging stock liable as stockholder.
Sec. 465. Representative of stock may vote as stockholder.
Sec. 466. Legislature may amend or repeal act.
Sec. 467. Corporation may increase or diminish capital stock.
Sec. 468. Publication of meeting to increase or diminish stock.
Sec. 469. Representation of two-thirds of stockholders to increase or diminish stock.
Sec. 470. Trustees assenting when personally liable.
Sec. 471. Treasurer to keep a book with names of all stockholders; penalty for refusing inspection of books.
Sec. 472. Persons owning fifteen per cent. of capital stock may demand statement of treasurer.
Sec. 473. What certificate of ditch company to contain.
Sec. 474. Priority of right to govern direction of water.
Sec. 475. Rates for water to be fixed by county commissioners.
Sec. 476. Company to keep banks of ditch in good order.
Sec. 477. What certificate of flume company to specify.
Sec. 478. What certificate of quartz company to specify.

Sec. 479. Tunnel company to have righ of way.
Sec. 480. What certificate of telegraph company to specify.
Sec. 481. When companies to begin and complete work.
Sec. 482. Powers of corporation under this act.
Sec. 483. How powers restricted.
Sec. 484. Persons liable to fine and imprisonment for damaging corporation's property.
Sec. 485. Nothing in this act to authorize issuing paper money.
Sec. 486. How companies heretofore formed organize under this act.
Sec. 487. How land required by company to be appraised and condemned.
Sec. 488. How companies formed under this act may become disincorporated.
Sec. 489. Power of trustees after dissolution.
Sec. 490. How place of business removed.
Sec. 491. How toll roads and bridges established
Sec. 492. Trustees may not sell mining property without meeting of stockholders.
Sec. 493. Proceedings and certificate of stockholder's meeting.
Sec. 494. If all property sold corporation dissolved.
Sec. 495. Conflicting acts repealed.

Certificate

SEC. 446. At any time hereafter any three or more persons who may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, mechanical or chemical business; of digging ditches, of building flumes or running tunnels, of purchasing, holding, developing, improving, using, leasing, selling, conveying or otherwise disposing of water powers and the sites thereof, and lands necessary or useful therefor, or for the industries and habitations arising or growing up, or to arise or grow up, in connection with or about the same; of purchasing holding, laying out, platting, developing, leasing, selling, dealing in, conveying, or otherwise using or disposing of townsites, or towns, or the lots, blocks, or subdivisions thereof, or lots, blocks, or subdivisions in any town, village or city, or of carrying on any other branch of business designed to aid in the industrial or productive interests of the country and the development thereof, or of one or more of the aforesaid branches of business, may make, sign and acknowledge before some officer competent to take acknowledgments of deeds, and file in the office of the clerk of the county in which the business of the company shall be carried on, and a duplicate thereof in the office of the secretary of the territory, a certificate in writing, in which shall be stated the corporate name of said company, and the object or objects for which the company shall be formed, the amount of the capital stock of the said company, the term of its existence, not exceeding twenty years, the number of shares of which the said stock shall consist, the number of trustees and their names who shall manage the concerns of said company for the first three months and the name of the city, town or locality, and the county in which the operations of said company shall be carried on.

NOTE.—See note to section 482.

Shall be body politic.

SEC. 447. When the certificate shall have been filed as aforesaid, the secretary of the territory shall record and carefully preserve the same in his office, and a copy thereof, duly certified by the secretary of the territory, under the seal of the Territory of Montana, shall be evidence of the existence of such company, and the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate in fact and in name, by the name stated in such certificate, and by that name have succession, and shall be capable of suing and being sued in any court of law or equity in this territory; and they and their successors may have a common seal, and may make and alter the same at pleasure, and they shall, by their corporate name, be capable in law of acquiring by purchase, pre-emption, donation, or otherwise, and holding or conveying by deed or otherwise any real or personal estate whatever, which may be necessary to enable the said company to carry on their operations named in the certificate.

More than one place of business

SEC. 448. Any certificate hereafter filed and recorded under the provisions of this chapter may designate one or more places where the company may carry on their business in the Territory of Montana.

If to do business outside Montana certificate shall state

SEC. 449. If any company shall be formed under this chapter for the purpose of carrying on any part of its business in any place outside of this territory, the said certificate shall so state, and shall also state the name of the city, town, or locality, and county in which the principal part of the business of said company within this territory is to be transacted, and said town and county shall be deemed the town, place and county in which the operations and business of the company are to be carried on, and its principal place of business within the meaning and provisions of this chapter.

Trustees: election.

SEC. 450. The stock, property and concern of such company shall be managed by not less than three nor more than nine trustees, who shall respectively be stockholders in said company, who shall (except the first three months) be annually elected by the stockholders, at such time and place as shall be directed by the by-laws of said company; and public notice of the time and place of holding such elections shall be published, not less than ten days previous thereto, in the newspaper printed nearest to the place where the operations of the said company shall be carried on, and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy, provided one-half of the stock is represented. All elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in said company, and the persons receiving the greatest number of votes shall be trustees; and when any vacancy shall happen among the trustees, by death, resignation, or otherwise, it shall be filled for the remainder of the year in such manner as shall be prescribed by the laws of said company.

The trustees of every corporation heretofore, or hereafter, organized under the laws of this territory providing for the formation of corporations for the conduct of any business for pecuniary profit, shall be chosen at one time, and on a general ticket. At such election for trustees, each stockholder shall have as many votes as the number of shares of stock held by him multiplied by the number of trustees to be chosen, and may cast all his votes for one candidate, or distribute them as he may see fit, and the persons having the greatest number of votes shall be trustees.

NOTE.—Last clause of section 450, act of Feb 21st, 1879

In case of failure of election.

SEC. 451. In case it should happen at any time that an election of trustees shall not be made on the day designated by the by-laws of said company when it ought to have been made, the company, for that reason, shall not be dissolved; but it shall be lawful, on any other day, to hold an election for trustees, in such manner as shall be provided for by the said by-laws, and all acts of trustees shall be valid and binding as against such company until their successors shall be elected.

Officers.

SEC. 452. There shall be a president of the company, who shall be designated from the number of trustees, and also such subordinate officers as the company by its by-laws may designate, who may be elected or appointed, and required to give such security for the faithful performance of the duties of their offices as the company, by its by-laws, may require.

Assessments.

SEC. 453. It shall be lawful for the trustees to call in and demand from the stockholders, respectively, all such sums of money by them subscribed, at such times and in such payments or instalments as the trustees shall deem proper, not to exceed twenty per cent. in any one month, under the penalty of forfeiting the shares of stock subscribed for, and for all previous payments made thereon, if payment shall not be made by the stockholders within sixty days after a personal demand or notice requiring such payment shall have been published for six successive weeks in the newspaper nearest the place where the business of the company shall be carried on as aforesaid.

By-laws

SEC. 454. The trustees of such company shall power to make such prudential by-laws as they shall deem proper for the management and disposition of the stock and business affairs of such company, not inconsistent with the laws of the United States and of this territory, and prescribing the duties of officers, artificers, and servants that may be employed; for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company.

Transfer of stock

SEC. 455. The stock of such company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no transfer shall be valid, except as between the parties thereto, until the same shall have been so entered upon the books of the company as to show the names of the parties by and to whom transferred, the numbers and designation of the shares, and the date of transfer.

Evidence.

SEC. 456. The copy of any certificate of incorporation, filed and recorded in pursuance of this chapter, certified by the secretary of the territory, under the great seal of the Territory of Montana, to be a true copy, and the whole of such certificate shall be received in all courts and places as *prima facie* evidence of the facts therein stated.

Liability of stockholders.

SEC. 457. The stockholders of every company incorporated under the provisions of this article [chapter] shall be severally and individually liable to the creditors of the company in which they are stockholders, to the amount of unpaid stock held by them respeclively, for all acts of and contracts made by such company, until the whole amount of capital stock subscribed for shall have been paid in.

NOTE —See note to section 482

Stock issued for purchase of property

SEC. 458. The trustees of such company may purchase mines, manufactories and other property necessary for their business, and issue stock to the amount of the value thereof in payment thereof, and the stock so issued shall be declared and taken to be full stock, and not liable to any further call; neither shall the holders thereof be liable for any further payments under the provisions of section 457 of this chapter; but in all statements and reports of the company to be published, this stock shall not be stated or reported as being issued for cash paid into the company, but shall be reported, in this respect, according to the facts.

NOTE.—See note to section 482.

Certificate of stock paid in.

SEC. 459. The president and a majority of the trustees within thirty days after the payment of the first instalment of the capital stock so fixed and limited by the company, shall make a certificate stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the president and a majority of the trustees, and they shall, within the said thirty days, record the same in the office of the county clerk of the county wherein the business of said company is carried on.

Annual report.

SEC. 460. Every such company shall, annually, within twenty days from the first day of September, make report, which shall be published in some newspaper published in the town, city or village, or if there be no newspaper published in said town, city or village, then in some newspaper published nearest the place where the business of said company is carried on, which shall state the amount of capital and of the proportion actually paid in and the amount of existing debts, which report shall be signed by the president and a majority of the trustees, and shall be verified by the oath of the president or secretary of said company, and filed in the office of the clerk of the county where the business of the company shall be carried on, and if any of said company shall fail to do so, all the trustees of the company shall be jointly and severally liable for all debts of the company then existing, and for all that shall be contracted before such report shall be made.

12th ses. p. 13.

Liability of trustees.

No liability shall attach to any trustee, or board of trustees, by virtue of the provisions of this section, for a failure to cause to be published in a newspaper the report in this section mentioned, if within the time herein mentioned said trustee, or board of trustees, or company, shall annually cause said report to be filed in the office of the county clerk and recorder of the county in which the business of the said company is carried on, as declared in its certificate of incorporation.

NOTE —Last clause of section 460 Act of February 22, 1881

Trustees liable for payment of dividend if company insolvent

SEC. 461. If the trustees of any such company shall declare and pay any dividend when the company is insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severably liable for all the debts of the company then existing, and for all that shall be thereafter contracted while they shall respectively continue in office: *Provided*, That if any of the trustees shall object to the declaring of such dividend, or to the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objection in writing with the clerk of the company, and with the clerk of the county, they shall be exempt from the said liability.

Loan to stockholder.

SEC. 462. No loan of money shall be made by any such company to any stockholder therein, and if any such loan shall be made to a stockholder, the officer who shall make it, or who shall assent thereto, shall be jointly and severally liable to the extent of such loan and interest, for all the debts of the company contracted before the repayment of the sum loaned.

False report or notice

SEC. 463. If any certificate or report made or public notice given by the officers of any such company in pursuance of the provisions of this chapter, shall be false in any material representation, all the officers who shall have signed the same shall be jointly and severally liable for all the debts of the company contracted while they are stockholders or officers thereof.

Liability of executor, etc.

SEC. 464. No person holding stock in any such company as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such company, but the person pledging such stock shall be considered as holding the same, and shall be liable as stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian or trustee, shall be liable in like manner, and to the same extent, as the testator or intestate, or the ward or person interested in such trust fund, would have been if he had been living and competent to act, and held the same stock in his own name.

Executor, etc. may represent stock

SEC. 465. Every such executor, administrator, guardian or trustee shall represent the shares of stock in his hands at all meetings of the company, and may vote, accordingly, as a stockholder; and every person who shall pledge his stock as aforesaid, may nevertheless, represent the same at all such meetings, and may vote accordingly, as a stockholder.

May be amended, etc.

SEC. 466. The legislature may at any time alter, amend or repeal this chapter, but such amendment or repeal shall not take away or impair any rights acquired or remedy given against any such corporation, its stockholders or officers, for any liability which shall have been previously incurred.

As to company organized under former law

SEC. 467. Any corporation or company heretofore formed, either by special act or under the general law, and now existing; or any company which may be formed under this chapter, may increase or diminish its capital stock by complying with the provisions of this chapter to any amount which may be deemed sufficient and proper for the purposes of the corporation, and may also extend its business to any other branch named in section 446 of this chapter, subject to the provisions and liabilities of this chapter; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amounts of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital; and any existing company heretofore formed under any special act, may come under and avail itself of the provisions of this chapter by complying with the following provisions, and thereupon such company, its officers and stockholders, shall be subject to all restrictions, duties and liabilities of this chapter.

Meeting of stockholders to increase stock, etc

SEC. 468. Whenever any company shall desire to call a meeting of stockholders for the purpose of availing itself of the privilege of this chapter, or for increasing or diminishing the amount of its capital stock, or for extending or changing its business, it shall be the duty of the trustees to publish a notice signed by at least a majority of them, in a newspaper in the county, if any shall be published therein, at least six successive weeks, and to deposit a written or printed copy thereof in the postoffice, addressed to each stockholder at his usual place of residence at least six weeks previous to the day fixed for holding such meeting, specifying the object of the meeting, the time and place, when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital, and the business to which the company would be extended or changed; and a vote of at least two-thirds of all the shares of stock shall be necessary to an increase or diminution of the amount of its capital stock, or the extension or change of its business as aforesaid, or to enable a company to avail itself of the provisions of this chapter.

Proceedings at meeting

SEC. 469. If at any time and place specified in the notice provided for in the preceding sections of this chapter, stockholders shall appear in person or by proxy, in number representing not less than two-thirds of all the shares of stock of the corporation, they shall organize by choosing one of the trustees chairman of the meeting, and also a suitable person for secretary, and proceed to a vote of those present in person or by proxy, and if, on canvassing the votes, it shall appear that a sufficient number of votes have been in favor of creasing or diminishing the amount of capital, or of extending or changing its business as aforesaid, or for availing itself of the privileges and provisions of this chapter, a certificate of the proceedings showing a compliance with the provisions of this chapter, the amount of capital actually paid in, the business to which it is extended or changed, the whole amount of debt and liabilities of the company, and the amount to which the capital stock shall be increased or diminished, shall be made out, signed and verified by the affidavit of the chairman, and be countersigned by the secretary, and such certificate shall be acknowledged by the chairman, and filed and recorded as required by section 446 of this chapter, and, when so filed, and so recorded, the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate, and the business extended or changed, as aforesaid, and the company shall be entitled to the privileges and provisions and be subject to the liabilities of this chapter, as the case may be.

Limit of indebtedness

SEC. 470. If the indebtedness of any such company shall at any time exceed the amount of its capital stock, the trustees of such company assenting thereto shall be personally liable for such excess to the creditors of such company.

List of stockholders.

SEC. 471. It shall be the duty of the trustees of every such corporation or company to cause a book to be kept by the treasurer or clerk thereof, containing the names of all persons, alphabetically arranged, who have been or shall, within the provisions of this chapter, become stockholders of such company, showing their places of residence, the number of the shares of stock held by them respectively, and the time when they became respectively the owners of such shares, and the amount of the stock actually paid in, which book shall, during the usual business hours of the day and on every day except Sunday and the Fourth of July, be open for the inspection of stockholders and creditors of the company and their personal representatives, where the office or principal place of business operation shall be located, and every such stockholder, creditor or representative shall have a right to make extracts from such books; and no transfer of stock shall be valid for any purpose whatever, except to render the person to whom it shall be transferred liable for the debts of the company, according to the provisions of this chapter until it shall have been entered therein as required by this section, by an entry showing to and from whom transferred; such book shall be presumptive evidence of the facts therein stated, in favor of the plaintiff to any suit or proceeding against such company or against any one or more stockholders. Every officer or agent of such company who shall neglect to make any proper entry in such books, or shall refuse or neglect to make any proper entry in such book, or shall make any improper entry, or shall refuse or neglect to exhibit the same or allow the same to be inspected and extracts taken therefrom, as provided by this section, shall be deemed guilty of a misdemeanor, and the company shall forfeit and pay to the party injured a penalty of fifty dollars for every such neglect or refusal, and all the damages resulting therefrom; and every company that shall neglect to keep such book open for inspection as aforesaid, shall forfeit to the people of Montana the sum of fifty dollars for every day it shall so neglect, to be sued and recovered in the name of the people of said territory, by the district attorney of the county in which the business of such corporation shall be located, and when so recovered the amount shall be paid into the treasury of such county for the use of common schools therein.

Penalty.

Fifteen per cent. of stock may demand statement.

SEC. 472. Whenever any person or persons owning fifteen per cent. of the capital stock of any company formed under the provisions of this chapter shall present a written request to the treasurer thereof that they desire a statement of the affairs of such company, it shall be the duty of such treasurer to make a statement of the affairs of the company, under oath, embracing a particular account of all its assets and liabilities in minute detail, and to deliver such statement to the persons who presented the said written request to said treasurer within twenty days after such presentation, and shall also, at the same time place and keep on file in his office for six months thereafter a copy of such statement, which shall, at all times during business hours, be exhibited to any stockholder of said company demanding an examination thereof; such treasurer, however, shall not be required to deliver such statement in the manner aforesaid oftener than once in six months. If such treasurer shall neglect or refuse to comply with any provisions of this chapter he shall forfeit and pay to the person presenting said written request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished, to be sued for and recovered in any court having cognizance thereof.

Ditch companies.

SEC. 473. Whenever any three or more persons associate under the provisions of this chapter to form a company for the purpose of constructing a ditch for the purpose of conveying water to any mines, mills or lands to be used for mining, milling or the irrigation of lands, they shall, in their certificate, in addition to the matters required in section 446 of this chapter, specify as follows: The stream or streams from which the water is taken; the point or place on said stream at or near which the water is to be taken out; the line of said ditch, as near as may be, and the use to which the said water is intended to be applied.

Right of way.

SEC. 474. Any ditch company formed under the provisions of this chapter, shall have the right of way over the line named in the certificate, and shall also have the right to run the water of the stream or streams named in the certificate through their ditch: *Provided*, That the line proposed shall not interfere with any other ditch whose rights are prior to those acquired under this article, and by virtue of said certificate; nor shall the water of any stream be diverted for [from] its original channel to the detriment of any mines, mill men, or others along the line of said stream, who may have a priority of right.

How ditch company shall furnish water.

SEC. 475. Any company constructing a ditch under the provisions of this chapter shall furnish water in the way and manner named in the certificate, in the way and manner the water is designated to be used, whether miners, mill men, or farmers, whenever they shall have water in their ditch unsold; and shall at all times give the preference to the use of the water in said ditch to the class of persons so named in the certificate; the rates at which water shall be furnished to be fixed by the county commissioners or the tribunal transacting county business, as soon as such ditch shall be completed and prepared to furnish such water.

Ditches to be kept in repair.

SEC. 476. Every ditch company organized under the provisions of this chapter shall be required to keep the banks of their ditch in good condition, so that the water shall not be allowed to escape from the same, to the injury of any mining claim, road, ditch or other property; and whenever it is necessary to convey any ditch over, across or above any lode or mining claim, that the company shall, if necessary to keep the water of said ditch out from any claim, flume the ditch, so far as necessary, to protect such claim or property from the water of said ditch.

Flume company.

SEC. 477. That when any company shall organize under the provisions of this chapter to form a company for the purpose of constructing a flume, their certificate in addition to the matter required in section 446 of this chapter shall specify as follows: The place of beginning, termini, and route, as near as may be, and the purpose for which such flume is intended; and when organized according to the provisions of this article, said company shall have the right of way over the line proposed in such certificate for such flume; provided it does not conflict with the right of any former fluming, ditching or other company.

Tunnel company.

SEC. 478. Whenever any three or more persons shall associate under the provisions of this chapter for the purpose of running a tunnel for mining for gold, quartz or other ore, their certificate of incorporation shall specify in addition to the matters required by section 446 of this chapter, as follows, to-wit: Where said tunnel is to be run, the place of commencement, course and termination, and the minerals or ore designed to be excavated.

Tunnel claim.

SEC. 479. Any company formed under the provisions of this chapter, for the purpose of excavating a tunnel, shall have and hold eleven hundred feet on each side of said tunnel, on all lodes discovered by them while excavating said tunnel, and through all lodes discovered previous to the commencement of said tunnel they shall have the right of way.

Telegraph company

SEC. 480. Whenever any three or more persons associate under the provisions of this chapter to form a company for the purpose of constructing a line or lines of magnetic telegraph in this territory, their certificate shall specify as follows: The termini of such line or lines, and the counties through which they shall pass; and such corporation is hereby authorized to construct such telegraph line or lines from point to point, along and upon any of the public roads, by the erection of any necessary fixtures, including posts piers and abutments, necessary for the wires: *Provided*, That the same shall not incommode the public in the use of said roads or highways.

When work on ditch or flume shall be commenced

SEC. 481. Any company formed under the provisions of this chapter, for the purpose of constructing any ditch or flume shall, within sixty days from the date of their certificate, commence work on such ditch, or flume, as shall be named in the certificate, and shall prosecute the work with due diligence until the same is completed, and the time of completion of any such ditch shall not be extended beyond a period of three years from the time the work was commenced as aforesaid; and any company failing to commence work within sixty days from the date of certificate, or failing to complete the same within three years from the time of commencement as aforesaid, shall forfeit all the right to the route so claimed, and the same shall be subject to be claimed by any other company. The time for the completion of any flume constructed under the provisions of this chapter shall not be extended beyond a period of three years, and the county commissioners of the counties in which roads and bridges may have been constructed under the provisions of the chapter of which this is amendatory, shall have the right to purchase the same, upon agreement with said company or companies, and declare them free for public use.

Powers.

SEC. 482. Every corporation formed under the provisions of this chapter, has power:

First. To have succession by its corporate name, for the period limited in its certificate of charter.

Second. To sue and be sued, complain and defend in any court of law or equity.

Third. To make and use a common seal, and alter the same at pleasure.

Fourth. To hold, purchase, and convey such real and personal estate as the purposes of the corporation may require.

Fifth. To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation.

Sixth. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock.

NOTE.—Sections 446, 457, 458 and 482 are as amended, respectively, by sections 1, 2, 3 and 4, respectively, of "An act to amend article 1 of chapter XV of the Fifth Division of the Revised Statutes of Montana relating to corporations for industrial or productive purposes," approved March 7, 1887. The remaining section of said act is section 5, as follows: "Section 5. This act shall take effect and be in force from and after its passage."

Powers vest it not enumerated.

SEC. 483. The powers enumerated in the preceding section shall vest in any corporation that shall be hereafter created, although they may not be specified in the certificate; but no corporation shall possess or exercise any corporate powers, except such as shall be necessary to the exercise of the powers so enumerated.

Penalty for damaging corporate property.

SEC. 484. Any person who shall wilfully or maliciously damage or interfere with any road, ditch, flume, bridge, ferry, telegraph line, or any of the fixtures, tools, implements, appurtenances, or any property of any company which may be organized under the provisions of this chapter, upon conviction thereof, before any court of competent jurisdiction in the county where the offence shall have been committed, shall be deemed guilty of a misdemeanor, and shall be punished by fine and imprisonment, or both, at the discretion of the court, said imprisonment not to exceed one year, and said fine not to exceed five hundred dollars, and to be paid into the county treasury for the use of the common schools; and said offender shall also pay all damages that any such corporation may sustain, together with costs of suit.

Not to issue money.

Sec. 485. Nothing in this chapter shall be so construed as to authorize any company, authorized under the same, to issue notes or bills for circulation as money.

Companies heretofore organized may take benefit of this chapter.

SEC. 486. That any company organized under the provisions of this chapter, and other companies who have become bodies corporate, heretofore formed under the provisions of any general law, or any special act, who may desire to come under and avail itself of the privileges and provisions herein granted, shall give notice to the secretary of the territory, of their surrender of their rights and privileges under any previous law or act, said notice to be certified to by the president of said company, and to be filed in the office of the secretary of the territory, and become a body corporate and politic, by complying with all and singular the provisions of this chapter.

Exercise of right of eminent domain

SEC. 487. Whenever any road, ditch, telegraph or fluming company, organized under the provisions of this chapter, shall not have acquired by gift or purchase, any land, real estate, or claim required for the construction or maintenance of any road, ditch, telegraph or flume, or which may be affected by any operations connected with the construction or maintenance of the same, the said corporation may present to the probate judge of the county wherein such lands, real estate, or claims shall be, a petition signed by the president, attorney, or agent of the same, describing with convenient accuracy and certainty, by maps or otherwise, the lands, real estate, or claims so required to be taken, or affected as aforesaid, setting forth the name and residence of each owner, or other person interested therein as owner, lessee or incumbrancer, as far as known to such president, attorney or agent, or appearing of record upon local or county records, and praying the appointment of three appraisers to ascertain the compensation to be made to such owner and person interested for the taking or injuriously affecting such land, real estate or claims, as aforesaid. The probate judge shall have satisfactory evidence that notice of an intended application, and the time and place thereof, for the appointment of appraisers between said corporations and the owners, and the persons interested in such lands, real estate and claims, has been given, at least ten days previously, to such owners, personally, at their residence, or on the premises, or by the publication thereof in a newspaper printed in the county in which such lands, real estate or claims shall be, or if no newspaper is published in said county, then by posting three or more notices in some public place in said county, such publication to be allowed only in respect to owners or persons interested, who shall appear by affidavit to have no residence in the county known to such president, attorney or agent, which notice shall be published at least thirty days prior to the time fixed for the application aforesaid. The court may adjourn the proceedings from time to time, shall direct any future notice thereof to be given, that may seem proper; shall have proofs, and allegations of all parties interested, touching the regularity of the proceedings, and shall, by an entry, in its minutes, appoint three disinterested appraisers as aforesaid, specifying in such entry a time and place for the first meeting of such appraisers. The said appraisers before entering upon the duties of their offices, shall take an oath to faithfully and impartially discharge their duties as said appraisers, and any one of them may administer oaths to witnesses produced before them; they may issue subpœnas and compel witnesses to attend and testify, and may adjourn and hold meetings for that purpose, and shall give reasonable previous notice to such owners or parties interested. They shall have the proofs and allegations of the parties, and any two of them, after reviewing the premises, shall, without fear, favor or partiality, ascertain and certify the compensation proper to be made to said owners or parties interested, for the lands, real estate, or claims, to be taken or affected, as well as all damages accruing to the owners or parties interested, in consequence of the condemnation of the same, taking or injuriously affected as aforesaid, making such deductions or allowance for the real benefits or advantages which such owners or parties interested may derive from the construction of said road, ditch, telegraph or or flume. They, or a majority of them, shall make, subscribe, and file in the office of the clerk of the county in which such lands, real estate or claims shall lie, a certificate of their said ascertainment and assessment, in which such lands, real estate or claims shall be described with convenient certainty and accuracy. The probate judge, upon such certificate and due proof that such compensation and separate sums, if any be certified, have been paid to the parties entitled to the same, or have been deposited to the credit of such parties in the county treasury, or other place, for that purpose, approved by the court, shall make and cause to be entered in its minutes, a rule describing such lands, real estate or claims, in manner aforesaid, such ascertainment of compensation, with mode of making it, and each payment or deposit of the compensation as aforesaid, a certified copy of which shall be recorded and indexed in the recorder's office of the proper county, in like manner, and with like effect as if it were a deed of conveyance from the said owners and parties interested to the said corporation. Upon the entry of such rule the said corporation shall become seized in fee, or shall have the exclusive right, title and possession of all such lands, real estates, or claims described in said rule as required to be taken as aforesaid, during the continuance of the corporation, and may take possession of and hold and use the same for the purpose of such said road, ditch, telegraph or flume, and shall thereupon be discharged from all claims for any damage by reason of any matter specified in such petition, certificate or rule of said probate judge. If at any time after an attempted or actual ascertainment of compensation under this article, or any purchase by or donation to said corporation of lands or claims for purposes aforesaid, it shall appear that the title acquired thereby to all or any part of such lands, for the use of said corporation, of, or if said assessment shall fail or be deemed defective, the said corporation shall proceed and perfect such title by procuring an assessment of the compensation proper to be made to any person who has title, claim or interest in, or lien upon such lands, and by making payment thereof in the manner hereinafter provided, as near as may be and at any stage of such new proceedings, or of any proceedings under this chapter, the probate judge may, by rule in that behalf made, authorize the said corporation, if already in possession; and if not in possession, to take possession of and use said premises during the pendency, and until the final conclusion of such proceedings, and may stay all actions and proceedings against such corporation on account thereof: *Provided*, Such corporation shall pay a sufficient sum into court, or give approved security to pay the compensation in that behalf when ascertained. And in every case when possession shall be so authorized it shall be lawful for the owners to conduct the proceedings to a conclusion, if the same shall be delayed by the company. The said appraisers shall receive five dollars per day as compensation for each day actually employed, such compensation to be taxed and allowed by the probate judge. If any appraisers so appointed shall die, be unable, or fail to serve, the court may appoint another in his place, on reasonable notice of the application, to be approved by the probate judge. Applications may be made to the district court in the same manner as herein provided, and the district court may thereupon cause such proceedings to be had and taken in like manner and with the same effect as herein required respecting the probate court.

Disincorporation.

SEC. 488. Any corporation formed under this chapter may dissolve and disincorporate itself by presenting to the judge of the district court of the district in which the principal place of business of such corporation is situated, a petition to that effect accompanied by a certificate of the proper officers, and setting forth that at a general or special meeting of the stockholders, called for that purpose, it was decided by a vote of two-thirds of all the stockholders to disincorporate and dissolve the corporation. Notice of the application shall then be given by the clerk of the court, which notice shall set forth the nature of the application, and shall specify the time when, and the place where it is to be heard; and shall be published in some newspaper of the county where the principal place of business of said company is located, for at least four consecutive weeks before the time of the hearing of such application, or if no newspaper be published in the county, then by advertisement posted up for thirty days, in three of the most public places in the county. At the time and place appointed, or any other to which the judge may postpone it, he shall proceed to hear and consider such application, and if satisfied that the corporation has taken the necessary preliminary steps and obtained the necessary votes to dissolve itself, he shall enter an order declaring it dissolved, and the rights of franchise acquired by said corporation shall cease and become null and void after such dissolution. All of the provisions of this section, concerning the disincorporation of corporations shall be and the same are hereby made applicable to corporations formed under the act of the legislative assembly of the Territory of Montana, of date February 9th, 1876, entitled "An act to provide for the formation of corporations other than those for pecuniary profit;" also to corporations formed under chapter XXXIV of this division.

Applicable to companies not for pecuniary profit.

NOTE—Last clause of section 488 act of March 2d, 1883

Power of trustees after dissolution of company

SEC. 489. Upon the dissolution of any corporation formed under this chapter the trustees, at the time of dissolution, shall be the trustees of the creditors and stockholders of the corporation dissolved, and shall have full power and authority to sue for and recover the debts and property of the corporation, by the name of trustees of such corporation; collect and pay the outstanding debts, settle all its affairs, and divide among the stockholders the money and other property that shall remain after the payment of the debts and necessary expenses.

Removal of place of business

SEC. 490. Any corporation desiring at any time to remove its principal place of business into some other county of the territory, shall file in the office of the county recorder of such county, a certified copy of its certificate of incorporation, and shall give notice of such removal by publication in some newspaper of the county in which such principal place of business was located, at least once a week for four weeks, and if no newspaper be published in such county, then by advertisement posted up for thirty days, in three of the most public places in said county.

Ex ses. p. 14

Tolls not collected without permit

SEC. 491. No person or persons shall be entitled or allowed to collect toll upon any toll-road, ferry, or bridge, constructed or established under the provisions of this chapter, except upon special permit granted by the board of county commissioners of the county in which such road, ferry, or bridge is situated, which said board shall at the time fix the rate of such toll, which they may thereafter alter, change, or abolish at pleasure.

NOTE —Section 491 act of July 22d, 1879

Trustees not to sell mining property without first calling a meeting of stockholders

SEC. 492. The board of trustees or officers of any mining corporation organized under the provisions of article one, chapter fifteen, of the fifth division of the revised statutes [chapter twenty-five of the compiled statutes] of this territory shall not have power to sell, lease, mortgage or otherwise dispose of the whole or any part of the mining ground, quartz mills, smelters, concentrators or reduction works of such corporation, unless they shall have first called a meeting of the stockholders of such corporation in the manner prescribed in section four hundred and sixty-eight of said article, [chapter 25] for the purpose of submitting to the stockholders of such corporation the proposition so to sell, lease, mortgage or otherwise dispose of the property of such corporation or some portion thereof. The notice so required to be published and sent to each stockholder shall distinctly specify each particular tract or piece of property so to be leased, sold, mortgaged or otherwise disposed of and the particular disposition to be made thereof.

Proceedings and certificate of meeting of stockholders.

SEC. 493. If at the time and place specified in the notice provided for in the preceding section stockholders shall appear in person or by proxy, representing not less than three-fourths of all the shares of stock of the corporation, they may organize by choosing one of their number chairman of the meeting, and also a suitable person for secretary, and proceed to vote on the proposition mentioned in said notice. If there are distinct pieces or parcels of property embraced in the proposition, each separate piece of property capable of being disposed of in one parcel without material injury to the remainder shall be voted on separately. If on canvassing the votes it shall be found that at least two-thirds of all the shares of the capital stock of such corporation have been voted in favor of selling, leasing, mortgaging or otherwise disposing of a given piece or the whole of said mining property, then the chairman and secretary of such meeting shall make a certificate showing the total number of shares of the capital stock of such corporation represented in such meeting and by whom voted; the number of shares voted in favor of the proposition and the number of shares voted against the same. Such certificate shall be signed by the chairman, countersigned by the secretary and verified by their oaths, taken before some officer qualified to administer oaths. Such verification shall be to the effect that the matters and things therein contained are true, and that the meeting at which such proceedings were had was called and held in pursuance of law, to the best of their knowledge, information and belief. Such certificate shall be spread at length on the record of stockholders' meetings of such corporation, and a copy thereof under the seal of said corporation, and attested by its president and secretary, and duly acknowledged shall be recorded in the office of the county recorder of every county wherein any of such property is situated.

If all property sold corporation dissolved.

Sec. 494. If a sale shall be made as above provided of the whole of the property of such corporation the corporation shall thereby be dissolved, and its affairs shall be wound up as provided for in other cases of the dissolution of corporations.

Repeal.

Sec. 495. All acts and parts of acts in conflict with this act are hereby repealed.

Note 1.—Sections 492 to 495, both inclusive, are respectively sections 1, 2, 3, 4, and comprise all of "An act in relation to the alienation of mining property by corporations," approved March 9, 1887.

Note 2.—All sections of the preceding chapter, except where otherwise specially noted, are from act of January 12, 1872.

CHAPTER XXVI.

ASSESSMENTS UPON THE STOCK OF CORPORATIONS.

Sec. 496. Powers of trustees to levy assessments conferred.

Sec. 497. Limitation of assessment.

Sec. 498. Majority of trustees to levy assessment only.
Sec. 499. Amount of assessment and time of payment to be specified.
Sec. 500. Form of notice to be published.
Sec. 501. How notice published.
Sec. 502. Proceeding if assessment is not paid.
Sec. 503. What notice of delinquent assessment must state.
Sec. 504. Publication of delinquent notice.
Sec. 505. Delinquent stock may be sold.
Sec. 506. Sale to be made at auction to highest bidder.
Sec. 507. Who deemed highest bidder.
Sec. 508. Corporation selling may bid in delinquent stock at the sale.
Sec. 509. The date at which stock becomes delinquent may be extended.
Sec. 510. Failure to publish notice not to invalidate assessment.
Sec. 511. Irregularity not to invalidate sale.
Sec. 512. How corporations to avail themselves of the provisions of this chapter.
Sec. 513. Corporations heretofore organized may render their stock assessable.

13th ses p 84.

Trustees may levy assessments

SEC. 496. The trustees of any corporation formed under the general laws of this territory shall have power to levy and collect, for the purpose of paying the proper and legal expenses of such corporation, assessments upon the capital stock thereof, in the manner and form, and to the extent hereafter provided, and not otherwise.

Maximum assessment

SEC. 497. No one assessment shall exceed five per cent. of the stated amount of the capital stock of the corporation named in the articles of incorporation, and none shall be levied while any portion of any previous assessment shall remain unpaid or uncollected, except in cases where all the powers of the corporation shall have been exercised in accordance with the terms of this chapter for the purpose of collecting such previous assessment, and except, also, the collection of a previous assessment against one or more stockholders be restrained by injunction or otherwise, in which case further assessment may be made and collected according to this chapter.

Levy must be by majority of board

SEC. 498. No assessment shall be made or levied except by order of the board of trustees, concurred in by a majority of said board, and duly entered upon the records of the corporation.

Levy; what same shall specify.

SEC. 499. Every order levying an assessment shall specify the amount thereof, and the time when the person or persons to whom, and the place or places where the same is payable. It shall also appoint a day, subsequent to the full term of publication of the assessment notice, on which the stock upon which assessment remains unpaid, shall be deemed *delinquent, which said day shall not* be less than thirty nor more than sixty days from the time of the making of said order levying the assessment, and a day for the sale of delinquent stock, which shall not be less than fifteen nor more than sixty days from the time appointed for declaring such stock delinquent.

Notice.

Sec. 500. Upon the making of such an order the secretary shall cause to be published immediately a notice thereof in the following form:

(Name in full, location of works). Notice is hereby given, that at a meeting of the trustees of said company, held on the (date) an assessment of (amount) per share was levied upon the capital stock of said company, payable (when, to whom, and where, particularly). Any stock upon which said assessment shall remain unpaid on the (day fixed) shall be deemed delinquent, and will be duly advertised for sale at public auction, and unless payment shall be made before, will be sold on the (day appointed) to pay the delinquent assessment, together with the costs of advertising and expenses of sale. (Signature of secretary, with particular location of office).

Time notice shall be published.

SEC. 501. Said notice shall be published once each week, for four successive weeks, in some daily or weekly paper published at the place designated in the articles of incorporation as the principal place of business of the corporation, and also in some paper published in the county in which the works of the corporation are situated, if a paper be published therein. *Provided*, That if the works of the corporation are not situated within some of the states or territories of the United States, then publication in a paper of the county shall not be necessary: *Provided also*, That if there is no newspaper published at the place designated as the principal place of business of the corporation, then the publication shall be made in the newspaper published nearest thereto. *And provided also*, That the notice specified in section 500 of this chapter may be served by delivering a copy thereof, certified by the secretary, to each stockholder personally; and in case of such service upon all of the stockholders of the corporation, then no notice by publication shall be necessary, and such personal notice shall be deemed complete.

Notice to delinquent

SEC. 502. If any portion of the assessment mentioned in said notice shall remain unpaid on the day specified therein for declaring the stock delinquent, the secretary shall, unless otherwise ordered by the board of trustees, cause to be published in the same papers in which the notice provided for in section 500 shall have been published, a notice substantially in the following form:

(Name in full, location of works). Notice—There is delinquent upon the following described stock, on account of assessment levied on (date) (and assessments levied previous thereto, if any,) the several amounts set opposite the names of the respective shareholders, as follows: (Names, number of certificate, number of shares, amount); and in accordance with law, (and an order of the board of trustees made on the (date), if any such order shall have been made), so many shares of each parcel of said stock as may be necessary, will be sold at the (particular place), on the (date), at (the hour), of said day, to pay said delinquent assessment thereon, together with costs of advertising and expenses of the sale. (Name of secretary with particular location of office.)

Notice shall describe certificates

SEC. 503. Said last named notice shall state every certificate of stock, with the number of shares which it represents, and the amount due thereon, separately, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificate for such shares have not been issued, shall be stated.

Time notice shall be published

SEC. 504. Said notice when published in a daily or weekly paper, or in both, shall be published as follows: When published in a daily paper, the same shall be published for a period of ten days, excluding Sundays and holidays, previous to the day of sale; when published in a weekly paper, the same shall be published for two weeks previous to the day of sale. The first publication of all delinquent sales shall be at least fifteen days prior to the day of sale.

Jurisdiction

SEC. 505. By the publication of the said notices, as hereinbefore provided, the corporation shall acquire jurisdiction to sell and convey a full, complete, perfect and absolute title to all of the stock described in the notice of sale upon which any portion of the assessments or costs of advertising shall remain unpaid at the hour appointed for the sale, but shall sell no more of said stock than is necessary to pay assessments due and costs of sale.

Sale of delinquent stock.

Sec. 506. On the day, and at the place, and as nearly as may be, at the hour, appointed in the notice of sale, the secretary, who is hereby fully empowered and authorized, shall, unless ordered by the board of trustees, sell, or cause to be sold, at public auction, to the highest bidder for cash, so many shares of each parcel of said described stock as may be necessary to pay the assessment and charges thereon, according to the terms of said notice of sale; *Provided*, That if payment be made before the time fixed for sale, the party paying shall only be required to pay the actual cost of advertising.

Sale to highest bidder.

Sec. 507. The person offering at such sale to pay the assessment and costs for the smallest number of shares, or fraction of a share, shall be deemed the highest bidder.

Company may purchase stock.

Sec. 508. If at a sale of any stock under the foregoing provisions of this chapter no bidder shall offer to take and purchase the same for the amount of the assessments and costs and charges, then due upon the same, then, and in such case, the same may be purchased and bid in by the company or corporation, through the secretary or president, or any director or trustee thereof, at a sum equal to the amount of the assessments, costs and charges due upon the same; and in pursuance and by virtue of such purchase, the said assessments, costs and charges shall be credited as satisfied and paid in full on the books of such corporation, and entry of the transfer of such stock to such corporation, in pursuance of such sale and purchase, shall be made on the books of such corporation. While such stock shall remain the property of such corporation the same shall not be assessable, nor shall any dividends be declared upon the same; but all assessments and dividends shall be apportioned upon and against the other stock of such company not owned by such corporation. All purchases of its own stock made by any corporation in accordance with the provisions of this section shall be held valid and as vesting the legal title to the same in said corporation; and the stock so purchased shall be held subject to the control of the remaining stockholders, who may make such disposition of the same as they may deem fit, in accordance with the by-laws of the corporation, or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of any corporation is held by said incorporation by purchase as aforesaid, a majority of the remaining shares of stock in said incorporation shall be held to be a majority of the shares of stock in said incorporation for all purposes of election, or voting on any question before a stockholder's meeting.

Time may be extended

SEC. 509. The times or dates fixed in any notice of assessment, or notice of delinquent sale, published according to the provisions of this chapter, may be once extended for a period of not more than thirty days, by order of the board of trustees, duly made and entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice shall be effectual unless notice of such extension or postponement be appended to and published with the notice to which the order relates.

If assessment void new publication.

SEC. 510. No assessment duly levied shall be rendered invalid by a failure to make proper publication of the notices hereinbefore provided for, nor by the non-performance of any act required to be performed in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, shall be void, and publication shall be begun anew.

Limitation of actions

SEC. 511. No action shall be sustained to recover any stock, or invalidate the sale of any stock for delinquent assessments, upon the ground of any irregularity in making the assessment, or for any irregularity in or defect of, the notice of such sale, or for any defect or irregularity in the sale, unless the party seeking to maintain such action shall first pay or tender to the corporation, or the party holding such stock so sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon, and interest on such sums from the time they were paid; and no such action shall be maintained unless the same shall be commenced by the filing of the complaint and the issuance of a summons thereon within six months after such sale shall have been made.

To what corporations applicable.

SEC. 512. The provisions of this chapter shall only apply to such corporations hereafter formed, as shall specify in its articles of incorporation the fact that the stock of such corporation shall be assessable; and any company or corporation hereafter formed, that wishes to avail itself of the provisions of this chapter, and render its stock assessable, shall specify in its articles of incorporation, in addition to the statement now required by law, a statement to the effect that the stock of such corporation is assessable, and thereupon, such company or corporation shall be liable to, and have the benefit of all the provisions of this chapter; but should the articles of such corporation contain no such statement, then the provisions of this chapter shall not apply to such company or corporation.

Other companies may render stock assessable.

SEC. 513. Any corporation hereto formed under the laws of this territory, may, by and with the unanimous consent of its stockholders, in writing, spread upon the records of such corporation, render its stock assessable under the provisions of this chapter. The board of trustees of any corporation heretofore formed under the laws of this territory, where such corporation desires to avail itself of the provisions of this chapter, shall file and have recorded in the office of the territorial secretary, and of the county clerk and recorder where the original articles of incorporation were filed, a certificate, duly acknowledged as provided in cases of articles of incorporation, stating that the stock of such corporation has been rendered assessable, and thereafter, the stock of such corporation shall be liable to assessments, as provided in this chapter.

NOTE—Chapter XXVI act of March 5th, 1883.

CHAPTER XXVII.

BANKS AND BANKING.

Sec. 514. Incorporation of bank of discount and deposit.
Sec. 515. Certificate.
Sec. 516. Bank not to purchase its own stock—exception.
Sec. 517. Powers.
Sec. 518. Directors: number, qualifications, powers.
Sec. 519. Transfer of stock.
Sec. 520. May hold real estate; for what purposes.
Sec. 521. May sell real estate, how.
Sec. 522. Dividends and reports.
Sec. 523. Liability of officers and stockholders.
Sec. 524. Dividends only from net earnings.
Sec. 525. List of shareholders.
Sec. 526. Increase of capital stock.
Sec. 527. Penalty for making false entries, etc.
Sec. 528. Forfeiture of franchise.
Sec. 529. Limit of liability to bank.
Sec. 530. To keep twenty per cent. of liabilities in available funds.
Sec. 531. Taxation of banks.

Incorporation of bank of discount and deposit

SEC. 514. Any number of persons not less than three may associate together to establish a bank of discount and deposit, and become incorporated upon the terms and conditions and subject to the liabilities prescribed in this act, but the aggregate of the amount of the capital stock of any such corporation or association shall not be less than twenty thousand dollars. No bank organized under the provisions of this act shall transact any business until its capital stock shall have been paid into the treasury of such bank in cash, and until a certificate to that effect under oath of the president and cashier shall be filed in the office of the territorial auditor, and in the office of the county clerk in the county where such bank is located, nor shall any such bank transact any business except such as is incidental and necessarily preliminary to its organization until it has been authorized by the territorial auditor to commence the business of banking, which authorization shall be a certificate under his hand and official seal, that such bank has complied with the provisions of this act and is authorized to commence the business of banking. The bank shall cause the certificate of incorporation and authorization of the territorial auditor to be published in some newspaper published in the town or county where the association is located, for at least four insertions, at once after the issuing thereof.

Certificate.

SEC. 515. Such persons shall, under their hands and seals make a certificate which shall specify:

First. The name assumed to distinguish such bank and to be used in all its dealings, which name shall not be that of any incorporated bank in the territory. And no private bank shall have, assume or use any corporate name.

Second. The place where the operations of discount and deposits of such banking is to be carried on, designating the particular county, city or town at which place such bank shall keep an office for the transaction of its business.

Third. The amount of the capital stock of such association and the number of shares into which the same is divided, which shares shall be one hundred dollars each.

Fourth. The names and places of residence of the stockholders and the number of shares held and owned by each of them respectively.

Fifth. The period at which such association shall commence and terminate.

Sixth. The names and place of residence of the several shareholders, and the number of shares of the capital stock of such corporation or association owned and held by each of them, which certificate shall be acknowledged and filed, as provided for in section 244 and 245 of the fifth division of the revised statutes, article one, chapter XV. [sections 446 and 447 of the compiled statutes of Montana, chapter XXV.], relating to corporations, a copy of which, duly certified by the secretary of the territory, shall be at once filed with the territorial auditor.

Bank not to purchase its own stock—exception

SEC. 516. No bank shall be the holder or purchaser of any portion of its own stock or of the capital stock of any other incorporated company unless such purchase shall be necessary to prevent loss upon a debt previously contracted in good faith on security, which at the time was deemed adequate to insure the payment of such debt, independent of any lien upon such stock; and stock so purchased shall in no case be held by the bank so purchasing for a longer period of time than six months, if the same can be sold for what the stock cost, or at par.

Powers.

SEC. 517. Such bank when so organized shall have power to carry on the business of banking by discounting on banking principles upon such securities as the directors or trustees shall deem expedient by receiving deposits; by buying or selling the bonds or stocks of this or any other territory or state or of the United States; also the bonds of any county, city, town or school district in this territory legally authorized to issue such bonds; gold and silver bullion: foreign coins and bills of exchange; by loaning money on real and personal security, and by exercising such incidental powers as may be necessary to carry on such corporation, association or business.

Directors.

SEC. 518. The stockholders shall elect from their number not to exceed nine directors, who may choose out of their number a president and vice-president, and appoint a cashier, teller, and such other officers and agents as their business may require, and remove such officers at their pleasure and appoint others. The first directors shall hold their office until the first Monday in January next after their election or appointment, and until their successors are elected and qualified, and all subsequent elections shall be held on the first Monday in January of each year. The directors are authorized to adopt such by-laws not in conflict with this act as may be necessary. Every director must be a citizen of the United States, and at least three-fourths of them must be residents of the territory. Every director must own in his own right at least ten shares of the capital stock of the par value of one hundred dollars, and any director who ceases to be the owner of such ten shares of stock or who becomes in any other manner disqualified. shall thereby cease to be a director, and his place shall be filled until the next election by the directors. Each director, when appointed or elected, shall take an oath that he will, so far as the duties devolve upon him, diligently and honestly administer the affairs of such bank, and will not knowingly violate, or willingly permit to be violated, any of the provisions of this act. Stockholders, in all elections of directors, and in deciding all questions at stockholders' meetings, shall be entitled to one vote on each share of stock held, and may vote said stock by proxy duly authorized in writing.

Directors: election, qualifications, powers etc

SEC. 519. No transfer of stock of any bank formed under this act shall be valid as against the bank so long as the registered holder thereof shall be liable either as principal debtor, surety or otherwise to the association, for any debts which shall be due and unpaid, nor in such case shall any dividend, interests or profits be paid on such shares so long as such liabilities continue, but all such dividends, interests and profits shall be retained by the bank and applied to the discharge of such liabilities; and no stock shall be transferred upon the books of any bank without the consent of a majority of the directors while the registered holder is indebted to the bank, and the same shall be stated on the face of the stock certificate.

Transfer of stock.

SEC. 520. It shall be lawful for any such banking association to purchase, hold and convey real estate for the following purposes only:

To what extend may hold real estate

First. Such as shall be necessary for its immediate accommodation in the convenient transaction of its business.

Second. Such as shall be mortgaged to it in good faith by way of security for loans previously made by or moneys due to such associations.

Third. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

Fourth. Such as it shall purchase at sales under judgments, decrees, or mortgages held by such association.

Sale of real estate

SEC. 521. Such banks shall not purchase, hold or convey real estate in any other case, or for any other purpose and all conveyances of such real estate shall be made to such corporation in the name mentioned in the articles of incorporation, and said bank may sell and convey the same, free from any claim thereon against any of the stockholders or any person claiming under them, by an instrument under the hand and seal of the president or vice-president and cashier of said bank, duly acknowledged.

Dividends and reports

SEC. 522. The directors of each bank shall semi-annually (or oftener as they may elect) on the first Monday in January and July, declare a dividend of so much of the net profits of the bank as they shall deem expedient, and on each of such days the president or cashier shall make a full, clear and accurate statement to the territorial auditor of the condition of the bank as it shall be on that day after declaring the dividend (if any be declared) which shall be verified by the oath of the president or cashier, and attested by the signature of at least two of the directors, and shall contain a full abstract of the general accounts of the bank so as to show plainly its resources and liabilities, and the amount of each kind thereof; and the same shall be published once in some newspaper of the county where such bank is located, if any newspaper be published therein, and at the expense of the bank; and the proof of such publication shall be furnished said territorial auditor. If any such banking association shall neglect to make out and transmit the statement required in this section for one month beyond the period when the same is required to be made, or shall wilfully violate any of the provisions of this act the directors shall be personally liable for all debts of said association contracted previous to and during the period of such neglect, and shall be subject to a penalty of not less than one hundred dollars nor more than five hundred dollars for such neglect.

Liability of officers and stockholders.

SEC. 523. The officers and stockholders of every banking corporation formed under the provisions of this act, shall be individually liable for all debts contracted during the term of their being officers or stockholders of such corporation equally and ratably to the extent of their respective shares of stock in any such corporation, except that when any stockholder shall sell and transfer his stock such liability shall cease at the expiration of six months from and after the date of such sale and transfer.

Dividends.

SEC. 524. No banking association shall declare any dividend except from the net earnings after deducting all losses.

List of shareholders.

SEC. 525. The president and cashier of every bank formed, pursuant to the provisions of this act, shall at all times keep a true and correct list of the names of all the shareholders of such bank, with the amount of stock held by each, the time of transfer and to whom transferred, and shall file a copy of such list in the office of the county recorder wherein such bank is located, and also in the office of the territorial auditor, on the first Monday in January in each year.

Increase of capital stock

SEC. 526. It shall be lawful for any corporation organized under the provision of this act, by their by-laws to provide for an increase of their capital stock, but no such increase shall be valid until the whole amount of such increase is paid in cash, and such payment certified under oath by the president or cashier to the territorial auditor, who shall give his certificate specifying the amount of such increase, with his approval thereof, and that it has been duly paid in as a part of the capital of such bank.

Penalty for making false entries, etc

SEC. 527. Every officer, agent or clerk of any bank who willfully and knowingly subscribes or makes any false statement of facts, entries in the book of such person or bank, or knowingly subscribes or exhibits false papers with the intent to deceive any person authorized to examine as to the condition of such bank, or willfully and knowingly subscribes and makes false reports, shall be deemed guilty of felony, and upon conviction thereof shall be subjected to imprisonment for a term not less than one year nor more than fifteen years.

Forfeiture of franchises

SEC. 528. Every bank organized under the provisions of this act which refuses or neglects to comply with the requirements lawfully made upon it for the period of sixty days after demand, shall be deemed to have forfeited its franchises; and any failure on the part of such bank to comply with, or any violation of any of the provisions of this act, shall work a forfeiture of its franchises; and in either case the attorney general, or, if there is no such officer, the county attorney of the county in which the bank is located, upon demand of the public examiner, or, if there is no such officer, the territorial auditor, shall commence an action for the purpose of annulling the existence of said corporation.

Limit of liability to bank.

SEC. 529. The total liability to any bank incorporated under the provisions of this act of any persons or any company, corporation or firm, for money borrowed, including in the liabilities of a company or firm, the liabilities of the several members thereof shall at no time exceed fifteen per cent. of the aggregate amount of the capital stock of such association actually paid in and of the permanent surplus fund of such bank; but the discount of bills of exchange drawn in good faith against actually existing values, and the discount of commercial or business paper actually owned by the person negotiating the same, shall not be considered as money borrowed.

To keep 20 per cent. of immediate liabilities in available funds

SEC. 530. Each bank organized under the provisions of this act shall at all times have on hand in available funds, an amount equal at least to twenty per centum of all its immediate liabilities; one-half of this amount of available funds may consist of balances due to the bank from good solvent banks, and one-half of such sum shall be held in reserve as cash in hand. Immediate liabilities shall include all deposits due to individual firms or corporations or to banks, and all items in the nature of claims payable on demand. In cash on hand shall be counted specie, legal tender notes, and all bills of solvent banks. Whenever the available funds of any bank shall be below twenty per centum of its immediate liabilities, such association shall not increase its liabilities by making any new loans or discounting, otherwise than by discounting or purchasing bills of exchange payable at sight, nor make any dividends of its profits until the required proportion between its immediate liabilities and its available funds has been restored.

Taxation

SEC. 531. Banks incorporated under the provisions of this act shall be taxed as national banks are, the stock to pay its share of the revenue whether held in the territory or not.

NOTE—Sections 514 to 531, both inclusive, are respectively sections 1 to 18, both inclusive and comprise all of "An act concerning banks and banking" approved March 5th, 1887.

CHAPTER XXVIII.

SAVINGS BANKS, TRUST DEPOSITS AND SECURITY ASSOCIATIONS.

Sec. 532. Not less than three persons may incorporate.

Sec. 533. Capital stock; shall begin business when.

Sec. 534. Articles of association.

Sec. 535. Body politic.

Sec. 536. First meeting.

Sec. 537. Directors.
Sec. 538. Powers of the corporation.
Sec. 539. What property may be held.
Sec. 540. May call in remainder of stock; delinquent stock.
Sec. 541. Investment of capital.
Sec. 542. Insurance upon mortgaged property.
Sec. 543. How served with process.
Sec. 544. Transfer of shares of stock.
Sec. 545. Liability of officers and stockholders.
Sec. 546. Incorporation of savings bank.
Sec. 547. Articles of association.
Sec. 548. Contents of articles.
Sec. 549. Capital stock.
Sec. 550. Officers and trustees.
Sec. 551. Vacancies.
Sec. 552. Business and objects.
Sec. 553. Deposits.
Sec. 554. Investment of capital stock.
Sec. 555. Trustees, etc., not to borrow of association; salaries.
Sec. 556. Qualifications and bonds of trustees.
Sec. 557. By-laws.
Sec. 558. What real estate association may hold.
Sec. 559. Inspection of books; report; penalty for false oath.
Sec. 560. Contingent fund.
Sec. 561. Deposit made by minor or married woman.
Sec. 562. May deposit cash with another bank.
Sec. 563. Penalty for falsely assuming name of savings bank.

Not less than three persons may incorporate

SEC. 532. That any number of persons not less than three may associate together to form an incorporated company for the purpose of carrying on a trust deposit, security and loaning business, and with powers herein conferred.

Capital stock.

SEC. 533. The amount of the capital stock in any such corporation shall be fixed and limited by the associates in their articles of association, and shall not be less than one hundred thousand dollars, nor more than five hundred thousand dollars, and shall be divided into shares of one hundred dollars each. When one hundred thousand dollars of the stock shall have been subscribed for, and that amount actually paid in in cash, any association may proceed to business under this act, and not before. The capital stock of any corporation organized under this act may be increased by a vote of two-thirds of the stockholders present at any meeting called for that purpose to any sum not exceeding five hundred thousand dollars. Any association organized under the provisions of this act shall properly qualify and proceed to business within ninety days after filing articles, and if it fails to do so within the time named its articles of association shall be null and void.

Shall begin business when.

Articles of association.

SEC. 534. The persons so associated shall subscribe articles of association which shall contain:

First. The names of the associates, and their places of residence respectively.

Second. The name by which the corporation shall be known and the place where its principal office for the transaction of business is established.

Third. The purposes of the corporation as mentioned in this act.

Fourth. The amount of capital stock actually paid in.

Fifth. The period for which such corporation is to be incorporated, not to exceed twenty years. The articles of association required by the last preceding section shall be recorded in the office of the secretary of the territory, and a copy thereof filed in the office of the county clerk of the county where the principal office for the transaction of business of any such corporation is to be established.

Body politic.

SEC. 535. All associations organized and established under this act shall be deemed bodies politic and corporate, capable of suing and being sued, and may have a common seal and alter and amend the same at pleasure, and may make from time to time such by-laws not inconsistent with the constitution and laws of the United States and of this territory, as a majority of the stockholders may determine upon.

First meeting.

SEC. 536. When any association shall be formed under this act any two of those associated may call the first meeting of the corporation at such time and place as they may appoint, by giving notice thereof by publishing the same in some newspaper published at the place where the principal office for the transaction of business is to be located, at least five days before the time appointed for such meeting: *Provided, however*, that no notice shall be necessary if all the subscribers to the capital stock unite in a call for such meeting in writing.

Directors

SEC. 537. The stock, property and affairs of such corporation shall be managed by not less than three directors, to be elected as the by-laws of such corporation shall determine, and to hold their offices for the period of one year, and until their successors shall be duly chosen; said directors shall choose one of their number president, and a majority of them convened according to the by-laws shall constitute a quorum for the transaction of business; said directors shall have power to fill any vacancy which may happen in their board by death, resignation or otherwise for the current year; and they may elect or appoint such other officers or agents as they may deem expedient.

Powers

SEC. 538. Any corporation organized under this act shall have power, in and by its corporate name, to receive money from any person or persons, corporation or company, on deposit, at such rate of interest and for such time as may be agreed upon for the purpose of loaning and investing the same, and to accept and execute any trust which may be created by instruments in writing appointing such corporation trustee for any lawful purpose, and to act as such trustee in all matters embraced in such trust; to take and receive from any individual or corporation on deposit for safe keeping and storage, gold and silver plate, jewelry, money, stocks, securities, and other valuable and personal property, and may have power to collect coupons, interest, and dividends, on said above described securities, and to rent out the use of safes and other receptacles on their premises upon such terms and for such compensation as may be agreed upon; to become security for administrators, guardians, or other trustees, or persons, in cases where, by law, or otherwise, one or more sureties are required, for a rate of compensation and upon such terms and conditions as shall be established by the directors of any such corporation.

What property may be held.

SEC. 539. It shall be lawful for any such corporation to lease, purchase, hold and convey, all such real or personal property as may be necessary to carry on its business, as well as such real or personal property as it may deem necessary to acquire in the enforcement or settlement of any claims or demands arising out of its business transactions; execute and issue in the transaction of its business all necessary receipts, certificates and contracts, which shall be signed by such person or persons as may be designated by the by-laws of such corporation.

May call in remainder of stock.

✓SEC. 540. The directors of any such corporation may call in the remainder of the capital stock not paid in when the corporation is formed, in such instalments and at such times and places as they may deem proper, by giving notice thereof as the by-laws shall prescribe; and in case any stockholder shall neglect or refuse payment of any such instalment for the space of sixty days after the same shall have become due and payable, and after he shall have been notified thereof, the stock of such delinquent stockholder may be sold by the directors at public auction at the office of the secretary of the corporation, giving at least thirty days notice by publication in some newspaper published at the place where the principal office for the transaction of the business of such corporation is located.

Sale of delinquent stock

Investment of capital

✓SEC. 541. The board of directors of any such corporation are hereby authorized to invest the capital of said corporation and to keep the same invested in good securities; and it shall be lawful for said corporation to make such investments of its capital and of the funds accumulated by its business, including money deposits, or any part thereof, in notes or bonds and mortgages on unincumbered real estate, within the Territory of Montana, and also on any or all stocks or bonds of this territory, or any other state or territory of the United States, or the bonds of any county, city, town, or school district, of this territory, legally authorized to issue such bonds.

Insurance upon mortgaged property.

✓SEC. 542. Whenever buildings are included in the valuation of any real estate upon which a loan shall be made by any such corporation, they shall be insured by the mortgagor in such company or companies, as the trustees shall direct, and the policy of insurance shall be duly assigned or the loss made payable, as its interest may appear to such corporation; and it shall be lawful for such corporation to renew such policy of insurance in the same, or in any other company or companies, as they may elect, from year to year, or for a longer or shorter term, in the case the mortgagor shall neglect to do so, and may charge the amount paid to the mortgagor; and all the necessary charges and expenses paid by such corporation for such renewal or renewals shall be paid by such mortgagor to such corporation, and it shall be a lien upon the property so mortgaged recoverable with interest from the time of payment as part of the moneys secured to be paid by such mortgage.

SEC. 543. Service of any legal process against any corporation formed under this act may be made on the president or secretary, or if neither of them can be found, by posting a copy thereof in some conspicuous place where the business of such corporation is transacted.

How served with process

SEC. 544. The shares of the stock of the corporation established under this act shall be deemed personal property, and shall be transferable on the books of such corporation in such manner as their by-laws shall prescribe.

Tranfer of shares of stock.

SEC. 545. The officers or stockholders of every corporation or association formed under this act shall be individually liable for all debts contracted during the term of their being officers or stockholders of such corporation or association, equally and ratably to the extent of their respective shares of stock in any such corporation or association.

Liability of officers and stockholders

SEC. 546. Any number of persons not less than three (3) may associate themselves together under the provisions of this act, and become incorporated as a savings association or savings bank, who shall, with their successors, constitute a body politic, and incorporate under the name adopted by them in their articles of association, provided no such association shall adopt a name previously adopted by any other association in this territory.

Incorporation of savings bank.

SEC. 547. Such incorporation shall be effected by the promoters thereof, signing and acknowledging articles of association, which shall be filed and recorded in the office of secretary of the territory, and a duplicate thereof shall be filed in the office of the clerk and recorder of the county in which the principal place of business of the association is located.

Articles of association.

SEC. 548. Such articles of association shall contain:

Contents of articles

First. The name of the association.

Second. The general nature of its business.

Third. The name of the city or town in which its principal place of business shall be located.

Fourth. The amount of its capital stock.

Fifth. The number of shares and the par value of each share.

Sixth. The date of commencement and the period of continuance of such corporation, which shall in no case exceed twenty years.

Seventh. The name and place of residence of the persons forming such association, and the amount of capital stock to be owned by each.

Eighth. The number of trustees who shall manage the affairs of said association, and the names, and residences of the first board of trustees.

Capital stock.

SEC. 549. No association shall be organized as a savings bank under the provisions of this act, with a capital stock of less than one hundred thousand dollars fully paid, in cash, prior to the reception of deposits by such bank, but such association may organize on a basis not exceeding five hundred thousand dollars capital stock, of which at least one hundred thousand dollars shall be paid in before the deposits are received, and the balance subject to the call of the trustees of such association within five years from the date of filing articles of association, but not more than twenty-five per cent. of such unpaid capital to be called in on any one year, and all calls to be made upon thirty days' notice. Such capital shall be held by the bank as a guarantee to its depositors to make good any loss or depreciation on the funds of the association, and shall be invested as hereinafter provided for the investment of the funds of said association. Each stockholder shall receive a certificate for the portion of the capital stock owned by him, which shall be transferable on the books of the association, and shall entitle the holder to participate in the profits of the association after the depositors shall have been paid such rate of interest as may be provided by the by-laws of the association to such extent, and in such manner as may be prescribed in the by-laws; and at the dissolution of said association to receive the proportionate amount thereof, which shall remain after the payment of the depositors.

Officers and trustees.

SEC. 550. The persons named in said articles of association as the first trustees, shall continue in office until resignation, removal or death, and shall constitute the board of trustees for such association, by whom the business of such association shall be managed and directed. The said trustees shall elect from their number a president, vice-president and such other officers as they may deem proper, and a majority of said trustees, of whom the president or vice-president shall be one, shall form a quorum for the transaction of business, and the affirmative vote of at least a majority of the members of the board shall be required in making any order for or authorizing any investment of any money or the sale or transfer of any stock or securities, or other real or personal property belonging to the association, or the appointment of any officer receiving any salary therefrom.

Vacancies.

SEC. 551. All vacancies by death, resignation or otherwise in the office of trustees shall be filled by the board by ballot without unnecessary delay, and at least a majority of the vote of the certifying trustees shall be necessary for the election of any trustee. The said trustees shall hold a regular meeting at least once in each month to receive such reports of their officers as to the business and the affairs of the association as their by-laws may prescribe and for the purpose of transacting such business as may be necessary; and any trustee omitting to attend the regular meeting of the board for six months continuously may thereupon at the election of said board be considered as having vacated his place, and a successor may be elected to fill the same. The district court of the judicial district wherein such association may have its principal place of business may at any time, for due cause shown, remove any trustee, upon proper notice to such trustee, and after affording him proper authority to be heard in his defence. Such application may be made to the court by any of the trustees of such association, or any stockholder thereof, who shall have at least one-tenth of the stock of the association.

Business and objects.

SEC. 552. The general business and objects of such association shall be to receive on deposit such sums of money as may from time to time be offered therefor by tradesmen, clerks, mechanics, laborers, miners, servants, and others, for safe keeping or for investment in accordance with the terms of this act. Said association shall receive on deposit all sums of money which may be offered for that purpose aforesaid: *Provided*, That every such association shall have the right to limit the aggregate amount which any one person or society may deposit to such sum as they may deem it expedient to receive, and may in their discretion refuse to receive any deposit, and also in their discretion at any time return all or any part of any deposit.

Deposits.

SEC. 553. All deposits shall be received by said association and returned to the depositors under such regulations as the board of trustees shall from time to time prescribe, which regulations shall be posted in some conspicuous place in a room where such association transacts its business and printed in all pass books delivered to its depositors.

Investment of capital stock

SEC. 554. At least one-half of the capital paid in and one-half of the whole amount deposited, shall be invested in bonds or other securities of the United States or of any of the states or territory, of any county, town or school district thereof on which interest is regularly paid or loaned on unincumbered real estate, with at least double the amount to be secured. The remainder may be invested in said bonds or loaned on the aforesaid securities or an approved personal security or may be used in buying and selling exchange, issuing and cashing letters of credit, and buying, selling, or pledging commercial paper; but no loan shall be made on personal security of less than two (2) responsible persons or collateral security to be approved by the trustees, provided no loan upon personal security shall be made to any one person or co-partnership, to an amount exceeding ten thousand dollars ($10,000.)

Trustee, etc not to borrow of association.

Salaries.

SEC. 555. No president, vice-president, trustee, or other officer or servant of such association, shall directly or indirectly borrow any of the funds of such association or of its deposits, or in any manner use the same in their private affairs or business, nor shall any trustee receive any pay, salary, or emolument, until after such interests as the trustees shall have determined to allow depositors shall be provided for, in accordance with the regulations of the association.

Qualifications and bonds of trustees

SEC. 556. Every trustee shall be the owner and holder of at least one thousand dollars ($1,000) of the stock of said association, and before entering upon his duties shall execute a bond to the Territory of Montana in the penal sum of five thousand dollars ($5,000) with two (2) or more sureties, who shall properly justify and be approved of by one of the judges of the supreme court of this territory, conditioned for a faithful discharge of his duties as trustee aforesaid. Said bond shall be recorded in the office of the county clerk and recorder of the county in which the articles of incorporation are recorded and also in the office of the secretary of the territory, and thereupon shall be delivered to and remain in the custody of the territorial auditor. In case of breach of conditions of said bond, any person or persons aggrieved thereby may institute a suit for damages in his or her name upon said bond, provided leave shall first be granted for that purpose by the judge of the court in which it is proposed to bring the suit and the judgment for the plaintiff in such actions shall be for the amount of damages which he shows himself entitled to recover in consequence of such breach, not exceeding the penalty of said bond; and successive actions may be in like manner brought upon such bonds by persons aggrieved by any breach of the conditions thereof, until the amount of the penal sum specified in such bond shall be exhausted, and each of said trustees shall be individually liable to depositors in a sum equal to the penalty of such bond in addition to the amount of stock held by them. In case any trustee elected to fill a vacancy fails to give the bonds required, within twenty (20) days after such election his place shall be considered vacant, and a new trustee elected in his stead. Such association shall be liable to the depositors for the amount of their deposits with interest allowed in the manner aforesaid. Any trustee may resign his office by written notice of his resignation presented at a regular meeting of the board; *Provided*, That such resignation shall have no effect upon the right of recovery upon the bond aforesaid when such right has accrued because of the acts of such trustee occurring prior to such resignation.

Resignation.

SEC. 557. The board of trustees shall have power from time to time to make, constitute, ordain, and establish such by-laws, rules and regulations, as they shall deem proper for the election of their officers, and the appointment of agents, servants, and employes; for prescribing their respective functions, and the mode and manner of discharging the same; for the regulation of time of meeting of the officers and trustees; and generally for transacting, managing, and discharging the affairs of the association: *Provided*, Such by-laws, rules, and regulations, are not repugnant to this act, to the laws of this territory, or the constitution and by-laws [laws] of the United States.

By-laws.

SEC. 558. The real estate of [which] such association may lawfully purchase, hold and convey, shall be:

What real estate may be hedl by association

First. Such as may be requisite for its immediate accommodation for the convenient transaction of its business, not exceeding in value one hundred and fifty thousand ($150,000) dollars.

Second. Such as shall have been mortgaged to it in good faith for moneys loaned in pursuance of the provisions of this act, or given as security for any loan advanced either by way of assignment or otherwise.

Third. Such as shall have been purchased at sale on judgment or decree obtained or rendered for money so loaned or advanced. And the said association shall not purchase, hold or convey, real estate in any other case or for any other purpose; and said association shall not directly, or indirectly, deal or trade in buying or selling any goods, wares or commodities whatever, except in cases where it is authorized to do so by the terms of this act, and except such personal property as may be requisite for its immediate accommodation for the convenient transaction of business, or which may have been pledged, mortgaged, or assigned to such association to secure moneys loaned or advanced by it.

Inspection of books.

SEC. 559. The books of said association shall at all times during their hours of business be open for inspection and examination to the auditor of this territory, or such other person or persons as the legislative assembly of said territory, or the territorial auditor, shall designate or appoint as agent for this purpose.

Report

Every association shall make a report of its condition to the territorial auditor on the first Monday of each January, April, July and October, and at such other times as said auditor may call for it, under the oath of its president or treasurer, attested by a majority of the trustees, showing in detail its liabilities and assets, and specifying its investments under heads of loans on mortgages, loans on collateral security, loans on personal security, bonds and stock, deposits in bank and cash on hand.

Penalty for false oath.

Any officer or clerk of such association who shall wilfully make a false oath or affidavit relative to the financial condition of such association shall be deemed guilty of perjury, and upon conviction thereof, shall be punished accordingly.

Contingent fund.

SEC. 560. Each association organized under the provisions of this act shall set aside annually at least five (5) per cent. of its net profits as a contingent fund to meet extraordinary expenses or losses until such surplus shall amount to twenty (20) per cent. of the capital stock of such association.

Deposit made by minor or married woman.

SEC. 561. Whenever any deposit shall be made by any minor the trustees may, at their discretion, pay to such depositor such deposit, although no guardian shall have been appointed for such minor or guardian of such minor shall not have authorized the drawing of the same; and the check, receipt or acquittance of such minor shall be as valid as if the same was executed by a guardian of said minor, or the said minor was of full age, if said deposit was made personally by said minor; and whenever any deposit shall have been made by a married woman the trustees may repay the same on the receipts of such depositors, and said receipt shall be a discharge as against all persons.

May deposit cash with another bank, etc

SEC. 562. Any association organized under the provisions of this act, shall have power to deposit any cash on hand in any national or private bank, or with any loan and trust company, which the board of trustees may determine to be solvent, upon such terms as may, to such trustees, be satisfactory: *Provided,* That no greater sum than fifty thousand dollars ($50,000) shall be at any one time deposited in any one bank or with any one association or company.

Penalty for falsely assuming name of savings bank

SEC. 563. Any person or association of persons who shall assume the name of a savings bank, or trust, deposit or security association, or hold themself out to the public as a savings bank or trust, deposit or security association, and who shall not have been duly organized under this act shall be deemed guilty of violating the provisions of this act, and on conviction thereof shall be fined not less than one-hundred dollars ($100) and not more than two hundred dollars ($200) for every ten (10) days while so violating this act.

NOTE—Sections 532 to 563, both inclusive, comprise all of "An act concerning savings banks and trust deposits and security associations," approved March 9, 1887, and said sections are given in the order in which they appear in said act.

CHAPTER XXIX.

INSURANCE COMPANIES.

Sec. 564. Notice given of intention to organize.
Sec. 565. Certificate of incorporation to be recorded.
Sec. 566. Minimum amount of capital allowed.
Sec. 567. Books for subscription to capital stock opened.
Sec. 568. Number of directors.
Sec. 569. Manner of investing surplus funds.
Sec. 570. Examination of the affairs of the company.
Sec. 571. Powers of the company.
Sec. 572. Election of directors.
Sec. 573. How president chosen.
Sec. 574. Secretary and other officers.
Sec. 575. Policies of insurance or contracts.
Sec. 576. Transfer of stock.

Sec. 577. Increase of capital stock.
Sec. 578. Dividends and profits.
Sec. 579. Real estate; acquiring limited.
Sec. 580. Liability on notes given for capital stock.
Sec. 581. Assessments to pay loss or damage.
Sec. 582. Name or title of company.
Sec. 583. Annual statement.
Sec. 584. Auditor may demand report at any time.
Sec. 585. What statement shall show.
Sec. 586. Foreign insurance companies.
Sec. 587. Certificate of authority to transact business.
Sec. 588. Annual statement of financial condition.
Sec. 589. Agents of foreign insurance companies.
Sec. 590. All foreign insurance companies to conform to this chapter.
Sec. 591. Auditor's duties.
Sec. 592. Deficiency in capital stock to be made good.
Sec. 593. Deficiency in mutual companies.
Sec. 594. Certificate of authority may be revoked.
Sec. 595. Fees of territory and auditor.
Sec. 596. Deposits for security of policies regulated.
Sec. 597. Certificate of compliance with law to be published.
Sec. 598. Expenses of examination to be paid.
Sec. 599. Printed forms to be furnished by the auditor.
Sec. 600. Taxes to be assessed upon insurance companies.
Sec. 601. Mutual companies not to transact business on the stock company plan, or stock company on the mutual plan.
Sec. 602. Mutual benefit companies not prohibited by this chapter.

13th ses p. 67.

Notice and certificate.

Sec. 564. Hereafter when any number of persons associate themselves together for the purpose of forming an insurance company for any other purpose than life insurance, they shall publish a notice of such intention once in each week for four consecutive weeks in some public newspaper in the county in which such insurance company is proposed to be located; and they shall also make a certificate under their hand, specifying the name assumed by such company, and by which it shall be known, the object for which said company shall be formed, the amount of its capital stock, and the place where the principal office of said company shall be located, which certificate shall be acknowledged before and certified by some notary public, or clerk of court of record, and forwarded to the territorial auditor, who shall submit the same to the attorney general for examination, and if it shall be found by the attorney general to be in accordance with the provisions of this chapter, and not in conflict with the constitution and laws of the United States and this territory, he shall make certificate of the facts and return it to the territorial auditor, who shall reject the name or title applied for by any company when he shall deem the same too similar to any one already appropriated by any other company, or likely to mislead the public.

Certificate to be recorded.

Sec. 565. When the said certificate of the said company shall have received the approval of the territorial auditor, the said company shall cause the same to be recorded as now required by law for recording articles of incorporation, and said persons, when incorporated, and having in all respects complied with the provisions of this chapter, are hereby authorized to carry on the business of insurance, as named in such certifieate of incorporation, and by the name and style provided therein, and shall be deemed a body corporate, with succession, they and their associates, successors and assigns, and shall be capable of sueing and being sued in any court of law or equity in this territory.

Capital stock.

Sec. 566. No joint stock company shall be incorporated under the provisions of this chapter with a smaller capital than two hundred thousand dollars, nor more than one million dollars, as may be specified in the certificate of incorporation, which stock shall be divided into shares of one hundred dollars each, of which capital at least fifty per cent. shall be fully paid up in cash, and that for the remainder of its capital there are in its possession notes of its stockholders, secured by at least one surety, or by mortgages on unincumbered real estate within this territory, worth at least twice the amount of such notes, which notes or other security shall be approved by the territorial auditor; nor shall any company, on the plan of mutual insurance, commence business in this territory until agreements have been entered into for insurance with at least two hundred applicants, the premiums upon which shall amount to not less than twenty-five thousand dollars, of which at least five thousand dollars shall have been paid in actual cash, and for the remainder of which notes of solvent parties, founded upon actual and *bona fide* applications for insurance, shall have been received; no one of the notes received, as aforesaid, shall amount to more than five hundred dollars, and no two thereof shall be given for the same risk, or made by the same person or firm, except when the whole amount of such notes does not exceed the sum of five hundred dollars, nor shall any note be regarded or represented as capital stock unless a policy be issued upon the same within thirty days after the organization of the company taking the same, upon a risk which shall be for no shorter period than twelve months; each of said notes shall be payable, in whole or in part, at any time when the directors shall deem the same requisite for the payment of losses by fire or inland navigation, and such incidental expenses as may be necessary for transacting the business of said company; and no notes shall be accepted as a part of such capital stock, unless the same shall be accompanied by a certificate of the clerk of the county in which the person executing such note shall reside, that the person making the same is, in his opinion, pecuniarily good and responsible for the same in property not exempt from execution by the laws of this territory, and no such note shall be surrendered while the policy for which it was given continues in force.

Books to be opened.

SEC. 567. Having published the notice, and filed the publisher's affidavit of the publication thereof with the territorial auditor, together with the certificate as required by the 564th section of this chapter, the persons named in the certificate of incorporation, or a majority of them, shall be commissioned to open books for the subscription of stock to the company at such times and places as to them may seem convenient and proper, and shall keep the same open until the full amount specified in the certificate is subscribed: or in case the business of such company is proposed to be conducted on the plan of mutual insurance, then open books to receive propositions and enter into agreement in the manner, and to the extent, specified in the 566th section of his chapter.

Directors.

SEC. 568. The affairs of any company organized under the provisions of this chapter shall be managed by not more than twenty-one nor fewer than five directors, all of whom shall be stockholders. Within thirty days after the subscription books shall have been filed a majority of the subscribers shall hold a meeting for the election of directors, each share entitling the holder thereof to one vote, and the directors thereof shall continue in office until their successors have been duly chosen and have accepted the trust.

Investment of funds

SEC. 569. It shall be lawful for any insurance company organized under this chapter, or incorporated under any law of this territory, to invest its capital and the funds accumulated in the course of its business, or any part thereof, in bonds and mortgages on unincumbered real estate within the Territory of Montana worth double the sum loaned thereon, exclusive of buildings, unless such buildings are insured in some responsible company or companies, and the policy or policies transferred to said company, and also in stocks of this territory, or stocks or treasury notes of the United States, in the stocks and bonds of any county or incorporated city in this territory which may have been heretofore authorized to be issued by the legislature of this territory, and to lend the same, or any part thereof, on the security of such stocks, or lands, or treasury notes, or upon bonds and mortgages, as aforesaid, and not otherwise, and to change and reinvest the same in like securities, as occasion may from time to time require; but any surplus money over and above the paid up capital stock of any such company organized under this chapter, or incorporated under any law of this territory, may be invested in or loaned upon the pledge of public stocks of the United States, or any of the states, or stocks, bonds or other evidences of indebtedness of any solvent, dividend paying institution, incorporated under the laws of this territory, or the United States, except their own stock. *Provided always*, That the current market value of such stock, bonds, or other evidences of indebtedness, shall be at all times during the continuance of such laws at least twenty per cent. more than the sum loaned thereon.

Examination and certificate under authority of auditor.

SEC. 570. Upon receiving notification that the requirements of the preceding sections have been complied with, the territorial auditor shall make an examination, or cause one to be made, by some disinterested person officially appointed by him for that purpose, and if it shall be found (if the examination shall be made other than by the auditor, then the finding shall be certified under oath), that the capital herein required by the company named, according to the nature of the business proposed to be transacted by such company, has been paid in and possessed by it in money, or in such stock, notes, bonds, or mortgages as are required by sections 566 and 569 of this chapter, then he shall so certify, and if the examination be made by any other than the auditor, then the finding shall be certified under oath, or if it is proposed to be a mutual insurance company, that it has received and is in actual possession of the capital, premiums, or *bona fide* engagements of insurance, or the securities, as the case may be, to the extent and value required by the 566th and 569th sections of this chapter, the name and residence of the maker of each premium note forming part of the capital of any such proposed mutual insurance company, and the amount of such note shall be returned to the auditor. The corporators or officers of any such company, or proposed company contemplated by this chapter, shall be required to certify under oath to the territorial auditor that the capital exhibited to the person making the the examination directed in this section was *bona fide* property of the company so examined; the certificates above contemplated shall be filed in the office of said auditor, who shall thereupon deliver to such company a certified copy of the same, with his written permission for them to commence business as proposed in their written certificate of incorporation, which, on being placed on record in the office of the recorder of the county in which the company is to be located by the recorder in a book prepared by himself for that purpose, shall be their authority to commence business and issue policies, and such certified copy of said certificate may be used in evidence for or against said company with the same effect as the originals.

Powers.

SEC. 571. It shall be lawful for any company organized under this chapter, or doing business in this territory:

First. To insure houses, buildings, and all other kinds of property against loss or damage by fire or other casualty, and to make all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on land, water or any vessel afloat, whatever the same may be.

Second. To make insurance on the health of individuals, and against the personal injury, disablement, or death, resulting from traveling or general accident by land or water.

Third. To insure the fidelity of persons holding places of public or private trust.

Fourth. To receive on deposit, and insure the safe keeping of books, papers, moneys, stocks, bonds, and all kinds of personal property.

Fifth. To insure horses, cattle and other stock against loss or damage by accident, theft, or any unknown or contingent event whatever, which may be the subject of legal insurance: to lend money on bottomery or *respondentia*, and to cause itself to be insured against any loss or risk it may have incurred in the course of its business, and upon the interest which it may have in any property by means of any loan or loans which it may make on mortgages, bottomry or *respondentia*, and generally to do and perform all other matters and things proper to promote these objects; *Provided*, That no company shall be organized to issue policy of insurance for more than one of the above mentioned purposes; and no company that shall have been organized for either one of said purposes shall issue policies of insurance for any other; and no company organized under this chapter, or transacting business in this territory, shall expose itself to loss on any one risk or hazard to an amount exceeding ten per cent. of its paid up capital, nor to write on a risk within the corporate limits of any one city an amount representing more than the paid up capital of the company, unless the excess shall be insured by the same in some other good and reliable company or companies; and provided that the restriction as to the amount of risk any company shall assume shall not apply to companies organized to guarantee the fidelity of persons in places of public or private trust, nor to companies that receive on deposit and guarantee the safe keeping of books, money and papers, and other property.

Annual meeting.

SEC. 572. The annual meeting for the election of directors shall be holden during the month of January, as the by-laws of the company may direct; *Provided, however*, That if for any cause the stockholders shall fail to elect at any annual meeting, then they may hold a special meeting some day subsequent thereto for that purpose by giving thirty days' notice thereof in some newspaper in general circulation in the county in which the principal office of the company shall be located; and the directors chosen at any such annual or special meeting, shall continue in office until the next annual meeting, and until their successors, duly elected, shall have excepted.

President.

SEC. 573. The directors shall choose by ballot a president from their own number, and shall fill vacancies which shall arise in the board or in the presidency thereof, and the board of directors thus constituted, or a majority of them, when convened at the office of the company, shall be competent to exercise all the powers vested in them by this chapter.

Other officers.

SEC. 574. The directors of any such company shall have power to appoint a secretary and other officer or agent necessary for transacting the business of the company, paying such salary and taking such securities as they may deem reasonable; they may ordain and establish such by-laws and regulations, not inconsistent with this chapter, or with the constitution and laws of the United States and this territory as shall appear to them necessary for regulating and conducting the business of the company; and it shall be their duty to keep full and correct entries of their transactions, which shall at all times be open to the inspection of the stockholders and to the inspection of persons invested by law with the right thereof.

Policies

SEC. 575. All policies or contracts of insurance made or entered into by the company may be made either with or without the seal of said company, but such policies shall be subscribed by the president, or such other officer as may be designated by the directors for that purpose, and shall be attested by the secretary thereof.

Transfers of stock.

SEC. 576. Transfers of stock may be made by any stockholder, or his legal representative, subject to such restrictions as the directors shall, from time to time, establish in their by-laws, except as hereinafter provided.

Increase of capital stock

SEC. 577. Whenever any company, organized under this chapter, with less than the maximum capital limited in section 566 of this chapter, shall, in the opinion of the directors thereof, require an increased amount of capital, they shall, if authorized by the holders of a majority of the stock to do so, file with the territorial auditor a certificate setting forth the amount of such desired increase, not exceeding said maximum, and thereafter such company shall be entitled to have the increased amount of capital fixed by said certificate; and the examination of securities composing the capital stock thus increased shall be made in the same manner as provided in section 570 of this chapter, for the capital stock first paid in.

Dividends.

SEC. 578. It shall not be lawful for the directors, trustees, or managers of any insurance company organized under this act, or incorporated under any law of this territory, to make any dividends except from the surplus profit arising from their business, and in estimating such profits there shall be reserved therefrom a sum equal to fifty per cent. of the amount received as premiums on unexpired risks and policies, which amount so reserved is hereby declared to be unearned premiums; and there shall also be reserved all sums due the corporation on bonds and mortgages, bonds, stocks and book accounts, of which no part of the principal or interest thereon has been paid during the year preceding such estimate of profits and upon which suit for foreclosures or collections has not been commenced, or which after judgment has been obtained thereon, shall have remained more than two years unsatisfied, and upon which interest shall not have been paid; and in case of any such judgment the interest due or accrued thereon and remaining unpaid, shall also be reserved. Any dividends made contrary to these provisions shall subject the company making it to a forfeiture of their charter.

May not hold real estate; exception.

Sec. 579. No company organized under this chapter shall purchase, hold or convey any real estate, save for the purpose and in the manner herein set forth, to-wit:

First. Such as shall be requisite for its convenient accommodation in the transaction of its business.

Second. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted, or for money due; or

Third. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the legitimate business of the company, or for money due; or

Fourth. Such as shall have been purchased at sales, or upon judgments, decrees or mortgages obtained or made for such debts; and it shall not be lawful for any such company to purchase, hold or convey real estate in any other case, or for any other purpose, or acquired in any other manner, except that it may convey real estate which shall be found in the course of its business not necessary for its convenient accommodation in the transaction thereof; and all such last mentioned real estate shall be sold and conveyed within three years after the same shall have been deemed by the territorial auditor unnecessary for such accommodation, unless the company shall procure a certificate from the said auditor that the interest of said company will materially suffer by a forced sale, in which event the sale may be postponed for such a period as said auditor shall direct in said certificate.

Deposit notes.

SEC. 580. All notes deposited with any mutual insurance company at the time of its organization, as provided for in section 566 of this chapter, shall remain security for losses and claims until the accumulation of the profits invested as required by section 569 of this chapter shall equal the amount of cash capital required to be possessed by stock companies organized under this chapter, the liability of each note decreasing proportionately as the profits are accumulated; but any note which may have been deposited with any mutual insurance company subsequent to its organization, in addition to cash premiums, or any insurance effected with such company may, after the expiration of the time of such insurance, or upon the cancellation by the company of the policy, be relinquished and given the maker thereof, or his legal representative, upon paying his proportion of losses and expenses, which may have accrued thereon during such term. The directors or trustees of any such company shall have the right to determine the amount of the note to be given in addition to the premiums by any person insured in such company; and every person effecting insurance in any mutual company, and also their heirs, executors, administrators and assigns, continuing to be so insured, shall thereby become members of said company during the period of insurance, and shall be bound to pay for losses and such necessary expenses as aforesaid accruing to said company, in proportion to his or their deposit note or notes: *Provided*, That any person insured in any mutual company, except in the case of notes required by this act to be deposited at the time of its organization, may at any time return the policy for cancellation, and upon the payment of the amount due at such time upon the premium note shall be discharged from further liability thereon.

Settlement of losses.

SEC. 581. The directors shall, as often as they deem necessary, after receiving notice of any loss or damage, settle and determine the sums to be paid by the several members thereof as their respective portions of such loss, and publish the same in such manner as they shall deem proper, or the by-laws shall have prescribed; but the sum to be paid by each member shall always be in proportion to the original amount of his deposit note or notes, and shall be paid to the officers of the company within thirty days after the publication of said notice; and if any member shall, for the space of thirty days after personal demand, or by letter, for payment shall have been made, neglect or refuse to pay the sum assessed upon him as a proportion of any loss aforesaid, the directors may sue for and recover the whole amount of his deposit note or notes, with cost of suit, but execution shall issue for assessment and costs as they accrue only, and every such execution shall be accompanied by a list of losses for which such assessment was made; if the whole amount of deposit notes shall be insufficient to pay the loss occasioned, the sufferers insured by the said company shall receive toward making good their respective losses a proportionate share of the whole amount of said notes, according to the sums to them respectively insured; but no member shall ever be required to pay for any loss more than the whole amount of his deposit note or notes.

What shall appear on face of policies

SEC. 582. Every insurance company hereafter organized as provided in this chapter shall, if it be a mutual company, embody the word "mutual" in its title, which shall appear upon the first page of every policy and renewal receipt; and every company doing business as a cash stock company, shall, upon the face of its policies, express in some suitable manner that such policies were issued by stock companies.

Annual statement to be made January first, what the report shall contain

SEC. 583. It shall be the duty of the president, or of the vice president and secretary of each company organized under this chapter, or incorporated under any laws of this territory, or doing business in this territory, annually, on the first day of January of each year, or within ninety days thereafter, to prepare under oath, and deposit in the office of the territorial auditor, a full, true and complete statement of the condition of such company on the last day of the month preceding that in which such statement is filed, which last statement shall exhibit the following items and facts in the following forms, viz:

First. The amount of capital stock of the company.

Second. The names of the officers.

Third. The name of the company and where located.

Fourth. The amount of capital stock paid up.

Fifth. The property or assets held by the company, specifying the value, as near as may be, of the real estate owned by such company, the amount of cash on hand and deposited in banks to the credit of the company, and in what bank the same is deposited, the amount of moneys, stocks or bonds deposited in any foreign country, state or territory of the United

States for the special benefit of the assured therein; the amount of cash in the hands of agents and in course of transmission; the amount of loans secured by first mortgages on real estate, with the rate of interest thereon, specifying the location of such real estate, and its assessed valuation; the amount of all other bonds and loans, and how secured, with the rate of interest thereon; the amount due the company on which judgment has been obtained; the amount of stocks of this territory, of the United States, of any incorporated city of this territory, and of any other stock owned by the company, specifying the amounts, numbers of shares, and par and market value of each kind of stock; the amount of stock held by such company as collateral security for loans, with amount loaned on each kind of stock, its par and market value; the amount of assessment on stock, and premium notes paid and unpaid; the amount of interest actually due and unpaid; all other securities and their value; the amount for which premium notes have been given on which policies have been issued.

Sixth. The liabilities of such company, specifying the losses adjusted and due; losses adjusted and not due; losses unadjusted; losses in suspense and the cause thereof; losses resisted and in litigation; dividends either in script or in cash, specifying the amount of each declared, but not due; dividends declared and due; the amount required to reinsure all outstanding risks on the basis of fifty per cent. of the premium on all unexpired risks under one year, and, pro rata, on all unexpired risks having more than one year to run; the amount due banks or other creditors; the amount of money borrowed, and the security therefor; all other claims against the company.

Seventh. The income of the company during the previous year, specifying the amounts received for premiums exclusive of premium notes, the amount of premium notes received; the amount received for interest; the amount received for assessments, calls on stock or notes, or premium notes; the amount received from all other sources.

Eighth. The expenditures during the preceding year, specifying the amount of losses paid during said term, stating how much of the same accrued prior, and how much subseqent to the date of the preceding statement, and the amount at which losses were estimated in such preceding statement; the amount paid for dividends; the amount paid commissions; salaries, expenses and other charges of agents; clerks and other employes; the amount paid for salaries, fees and other charges of office and directors; the amount paid for local, territorial, national, internal revenue and other taxes and duties; the amount paid for all other expenses, expenditures, including printing, stationery, rents, furniture, etc.

Ninth. The largest amount insured in any one risk.

Tenth. The amount of risks written during the year then ending.

Eleventh. The amount of risks in force having less than one year to run.

Twelfth. The amount of risks in force having more than one and not over three years to run.

Thirteenth. The amount of risks having more than three years to run.

Fourteenth. The following question must be answered, viz: "Are dividends declared on premiums received for risks not terminated?" The territorial auditor shall withhold the certificate of authority from any such company neglecting or failing to comply with the provisions of this section.

Inquiries by auditor.

SEC. 584. The territorial auditor is hereby authorized and empowered to address any enquiries to any insurance company in relation to its doings and condition, or any other matter connected with its transactions which he may deem necessary for the public good, or for a proper discharge of his duties, and it shall be the duty of any company so addressed to promptly reply in writing thereto.

Exhibit of of amonnt of notes

SEC. 585. The statement of any company the capital of which is composed in whole or in part of notes, shall, in addition to the foregoing, exhibit the amount of notes originally forming the capital, and also what proportion of said notes are still held by such company and considered capital.

Foreign company.

SEC. 586. It shall not be lawful for any insurance company, association, or partnership, organized or associated for any of the purposes specified in this chapter, incorporated by, or organized under, the law of any other state, or the United States, or any foreign government, directly or indirectly, to take risks, or transact any business of insurance in this territory, unless possessed of two hundred thousand dollars of actual paid up capital, exclusive of any assets of any such company as shall be deposited in any other states or errito ries or foreign countries, for the special benefit or security of the insured therein; and any such company desiring to transact any such business as aforesaid, by any agent or agents in this territory, shall appoint one attorney in each county in which agencies are established, resident at the county seat, and shall file with the territorial auditor a written instrument, duly signed and sealed, authorizing such attorney of such company to acknowledge service of process for and in behalf of such company in this territory, consenting that such service of process, mesne or final, upon such attorney, shall be taken and held as valid as if served upon the company, to the laws of this territory, or any other territory or state, and waiving all claim of right or error by reason of such acknowledgment or service, and also a certified copy of their charter or deed of settlement, together with a statement under the oath of the president or vice-president, or other chief officer, and the secretary of the company for which they may act, stating the name of the company and the place where located, the amount of its capital with a detailed statement of the facts and items as required from companies organized under the laws of this territory, as per section 583 hereof; such statement shall also show to the full satisfaction of the territorial auditor that said company, if organized without the United States of America, has deposited in some one of the United States or territories a sum not less than one hundred thousand dollars for the special benefit or security of the assured therein, and shall file also a copy of the last annual report, if any, made under any law of the state, territory, or foreign country by which such company was incorporated; and no agent shall be allowed to transact business for any company whose capital is impaired by the liabilities, as stated in section 583 of this chapter, to the extent of twenty per cent. thereof while such deficiency shall continue.

Not to do business without auditor's certificate.

SEC. 587. It shall not be lawful for any agent, or agents, or individual, to act for any insurance company referred to in this act, directly, or indirectly, in taking risks, or transacting business of insurance in this territory, without procuring from the territorial auditor a certificate of authority that such company has complied with all the requirements of this chapter.

Statement of foreign companies.

SEC. 588. The statements and evidence of investments required of foreign companies, as above, shall be renewed annually, in such manner and form as required by this act, and as said auditor may direct, with any additional statement of the amount of the losses incurred and premiums received in this territory, during the preceding period, so long as such agency continues; and the said auditor, on being satisfied that the capital, securities and investments remain secure, as heretofore provided, shall furnish a renewal of his certificate, as aforesaid.

What statements shall be contained in advertisement.

SEC. 589. Every agent of any insurance company shall, in all advertisements of such agency, publish the location of the company, giving the name of the city, town, or village, in which the company is located, and the state or government under the laws of which it is organized, and shall in no case advertise any merely authorized capital, but shall in all such advertisements be limited to actual paid up capital and cash assets liable for fire losses only. The term agent or agents used in the foregoing section shall include an acknowledged agent or surveyor, or any other person or persons who shall in any manner, directly or indirectly, transact or aid in transacting the insurance business of any insurance company not incorporated by the laws of this territory. The provisions of the foregoing sections relative to foreign companies shall apply to all such companies, partnerships, associations or individuals, whether incorporated or not. *Provided*, That none of the provisions of this clause shall be deemed operative in regard to insurance upon goods or merchandise in transit.

All insurance companies must conform to provisions of this chapter

SEC. 590. Every insurance company organized under the laws of, or doing business in this territory, shall conform to all the provisions of this chapter, applicable thereto, on or before the first day of July, 1883, and when necessary, any existing company shall change its charter and by-laws so as to conform thereto by a vote of a majority of its board of directors, and any president, secretary, or other officer of any company, organized under the laws of Montana, or any officer or person doing or attempting to do business in this territory for any insurance company organized without this territory, failing to comply with any of the requirements of this chapter, or violating any of the provisions thereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one thousand dollars, and be imprisoned in the county jail for a period of not less than thirty days nor more than six months.

Auditor to appoint examiners examinations

SEC. 591. It shall be the duty of the territorial auditor, whenever he shall deem it expedient so to do, in his judgment, to appoint one or more persons, not officers, agents or stockholders of any insurance company doing business in this territory, to examine into the affairs and condition of any insurance company incorporated or doing business in this territory, or to make such examination himself; and it shall be the duty of the officers or agents of such company to cause their books to be opened for the inspection of the auditor or the person or persons so appointed, and otherwise facilitate such examinations so far as may be in their power so to do, and for the purpose of arriving at the truth in such cases the auditor, or person or persons so appointed by him, shall have power to examine, under oath, the officers or agents of any company, or others, if necessary, relative to the business and condition of said company, and, whenever the auditor shall deem it best for the interest of the public so to do, he shall publish the result of such investigation in one or more papers of this territory; and, whenever it shall appear to said auditor, from such examination, that the assets and funds of any company incorporated in this territory are reduced or impaired by the liabilities of said company, as described under the head of liabilities in the statement required by this chapter, more than twenty per cent. below the paid-up capital stock required by this act, he may direct the officers thereof to require the stockholders to pay in the amount of such deficiency within such a period as he may designate in such requisition; or he shall communicate the fact to the attorney-general, whose duty it shall then become to apply to the district court, or if in vacation, to one of the judges thereof, for an order requiring said company to show cause why their business should not cease, and the court, or judges, as the case may be, shall thereupon proceed to hear the allegations and proofs of the respective parties, and in case it shall appear to the satisfaction of said court, or judges, that the assets and funds of said company are not sufficient as aforesaid, or that the interests of the public require it, the said court or judge shall decree a dissolution of said company and a distribution of its effects. The said court or judge shall have power to refer the application of the attorney-general to a referee to inquire into and report upon the facts stated therein.

Amount of capital stock to be increased uuon requisition of auditor

SEC. 592. Any company receiving the aforesaid requisition from the said auditor, shall, forthwith, call upon its stockholders for such amounts as will make its paid up capital equal to the amount filed by this act, or the charter of said company; and in case any stockholder shall refuse or neglect to pay the amount so called for, after notice. personally given, or by advertisement, in such time and manner as said auditor shall approve, it shall be lawful for said company to require the return of the original certificate of stock held by such stockholder, and in lieu thereof to issue new certificates for such number of shares as the said stockholders may be entitled to in the proportion that the ascertained value of the funds of said company may be found to bear to the original capital of the said company, the value of such shares for which the new certificates shall be issued to be ascertained under the direction of the said auditor, the company paying for the fractional part of shares; and it shall be lawful for the directors of such company to create new stock and dispose of the same, and to issue new certificates therefor, to an amount sufficient to make up the original capital of the company; and in event of any additional losses accruing upon new risks, taken upon the expiration of the period limited by the said auditor in the aforesaid requisition for the filling up of the deficiency in the capital of such company, and before said deficiency shall have been made up the directors shall be individually liable to the extent thereof.

Proceedings if assets insufficient

Sec. 593. If upon the examination it shall appear to the said auditor that the assets of any company chartered upon the plan of mutual insurance under this chapter are insufficient to justify the continuance of such company in business, it shall be his duty to proceed in relation to such company in the same manner as is herein required in regard to joint stock companies, and the trustees or directors of such company are hereby made personally liable for any losses which may be sustained upon risks taken after the expiration of the time limited by the said auditor for filling up the deficiency in the capital, and before such deficiency shall be made up; any transfer of the stock of any company organized under this chapter, made during the pending of any investigation required above, shall not release the party making the transfer from his liability for losses which may have accrued previous to such transfer.

Auditor may cause examination to be made of the affairs of any insurance company.

Sec. 594. The territorial auditor shall be authorized to examine into the condition and affairs of any insurance company, as provided for in this chapter, doing business in this territory, not organized under the laws of this territory, or cause such examination to be made by some person or persons appointed by him, having no interest in any insurance company, and whenever it shall appear to the satisfaction of said auditor that the affairs of any such company are in an unsound condition, he shall revoke the certificate granted in behalf of such company and shall cause the notification thereof to be published in some newspaper in general circulation, published at the territorial capital, and the agent or agents of such companies are, after such notice, required to discontinue the issuing of any new policy, or the renewal of any previously issued.

14th ses. p. 87.

Fees.

SEC. 595. There shall be paid by every company, association, person or persons, agent or agents, to whom this chapter shall apply, the following fees:

For filing and examination of the first application of any company, and issuing the certificate of license thereon, fifty dollars; for filing each annual statement herein required, twenty-five dollars, which amount and the said fee required for the filing and examination of the first application of any company and issuing the certificate of license thereon, shall be collected by the territorial auditor, and paid by him into the territorial treasury; for each certificate of authority, two dollars; for every copy of paper filed, as herein provided, the sum of ten cents per folio, and fifty cents for certifying to the same and affixing the seal of office thereto, all of which fees shall be paid to the officer required to perform the duties.

NOTE—Section 595 act of March 12, 1885.

Foreign corporations.

SEC. 596. Whenever the existing or future laws of any other state or territory of the United States shall require of insurance companies, incorporated by or organized under the laws of this territory, having agencies in such other state or territory, or of the agents thereof, any deposit of securities in such state or territory, for the protection of policy holders or otherwise, or any payment for taxes, fines, penalties, certificates of authority, license fees, or otherwise, greater than the amount required for such purposes from similar companies of other states or territories by the then existing laws of this territory, then, and in every such case, all companies of such states or territories establishing, or having heretofore established, any agency or agencies in this territory, shall be and are hereby required to make the same deposit for a like purpose with the auditor of this territory, and to pay said auditor for taxes, fines, penalties, certificates of authority, license fees, or otherwise, an amount equal to the amount of such charges and payments imposed upon or required by the laws of such state or territory of the companies of this territory or the agents thereof.

Publication of report and certificate.

SEC. 597. It shall be the duty of every insurance company of the kind provided in this chapter, doing business in this territory, organized under the laws of this territory, or any other state, territory or country, to publish once, annually, in two newspapers of general circulation, one of which papers shall be published at the capital of the territory, and in case of companies organized in the territory, one of which shall be published in the county where the principal office is located, a certificate from the territorial auditor that such company has in all respects complied with the laws of this territory relating to insurance.

Company to pay expense of examination

SEC. 598. The necessary expenditure for any examination made, or ordered to be made, by the auditor of this territory under this chapter, shall be certified by him and paid on his requisition by the company which is the subject of such examination. *Provided*, That the territorial auditor shall have the power upon receiving information that the capital of any company is impaired to call upon any such company for a full statement of its condition, and in event of refusal or neglect of any company to answer the requisition of the auditor, as aforesaid, he shall proceed to make the examination required by this chapter, and to take the necessary action to terminate the business of said company in this territory.

Auditor to furnish printed forms.

SEC. 599. It shall be the duty of the territorial auditor to cause to be prepared and furnish to each of the companies organized under the laws of this territory, and to attorneys or agents of companies incorporated by other states or territories and foreign governments, who may apply for the same, printed forms of statements required by this chapter, and he may, from time to time, make such changes in the form of these statements as shall be deemed by him best adapted to elicit from the companies a true exhibit of their condition in respect to the several points hereinbefore enumerated.

Taxation.

SEC. 600. Each and every insurance company transacting business in this territory shall be taxed upon the excess of premiums received over losses and ordinary expenses incurred within the territory during the year previous to the year of listing in the county where the agent conducts the business, properly proportioned by the company at the same rate that all other personal property is taxed, and the agent shall render the list, and be personally liable for the tax; and if he refuses to render the list, or to make affidavit that the same is correct to the best of his knowledge and belief, the amount may be assessed according to the best knowledge and discretion of the assessor and the county board of equalization may, at their discretion, add fifty per cent. to the amount returned by the assessor. Insurance companies shall be subject to no other taxation under the laws of this territory, except taxes on real estate and the fees imposed by section 595 of this chaper; and all moneys received from such insurance companies in payment of taxes, as provided for in this section, shall be applied to the maintenance of the fire department of the town or city where such business shall be carried on, if there shall be such fire department there established; if not, then such moneys shall be paid into the general fund of such county.

Kinds of risks.

SEC. 601. It shall not be lawful for any company organized upon the mutual plan to do business and take risks upon the stock plan, neither for a company organized as a stock company to do business upon the plan of a mutual insurance company.

Not to apply to certain associations.

SEC. 602. Nothing in this chapter shall be so construed as to prevent any number of persons, not exceeding two hundred, from making mutual pledges, and giving valid obligations to each other, for their own insurance from loss by fire or death; but such association of persons shall in no case insure any property not owned and occupied by one of their own number, and no life except that of one of their own number; nor shall the provisions of this chapter be applicable to such associations or companies; *Provided*, Such associations or companies shall in no case pay any salaries or compensation to officers, agents, or other employes, and shall receive no premiums nor make any dividends.

NOTE.—Chapter XXIX, except where otherwise specially noted, act of March 8th, 1883.

CHAPTER XXX.

ASSESSMENT LIFE INSURANCE COMPANIES.

Sec. 603. May transact business by complying with this chapter.

Sec. 604. Majority of incorporators must be citizens of this territory; age of members limited.

Sec. 605. Territorial auditor to issue certificate

Sec. 606. May hold and dispose of real and personal property.
Sec. 607. Number of directors.
Sec. 608. When assessment is made must state object.
Sec. 609. Penalty for falsely certifying.
Sec. 610. How surplus funds invested.
Sec. 611. Not subject to laws governing general insurance companies.
Sec. 612. Territorial auditor may employ accountant to verify statement.
Sec. 613. Territorial auditor to examine into financial condition.
Sec. 614. Penalties for non-compliance.
Sec. 615. Penalty for non-compliance of officers of company.
Sec. 616. Date of making first statement.
Sec. 617. When license to transact business to issue.
Sec. 618. Fees to be paid territorial auditor; duties of territorial auditor.

14th ses p 41

Corporations may be organized for certain purposes

SEC. 603. Corporations, associations, or societies for the purpose of furnishing life indemnity or pecuniary benefits to the widows, orphans, heirs, or relatives, by consanguinity or affinity, devisees or legatees of deceased members, or accident or permanent disability indemnity to members thereof, and where the funds for the payment of such benefits shall be secured in whole or in part by assessment upon the surviving members, may be organized or do business in the Territory of Montana, subject to the conditions hereinafter provided, when such corporation, association, or society, shall show by a sworn statement, a guarantee fund of not less than $20,000 for the benefit and security of the policy holders, or those holding certificates of life indemnity.

Certificate

SEC. 604. Any five or more persons, citizens of the United States, a majority of whom shall be *bona fide* citizens and voters of this territory, may associate themselves together as a body corporate, for which purpose they shall make, sign, and acknowledge, before any officer authorized to take acknowledgments of deeds in this territory, a certificate of association, in which shall be stated the name or title by which such corporation, association, or society, shall be known in law; the location of its principal business office, which office must be located in this territory; the name and residents of the incorporators; the object of the corporation, with its plan of doing business clearly and fully defined; the number of its directors, trustees, or managers, and the names of those selected to serve until its first annual meeting; the limits as to age of applicants for membership, which must be between the ages of sixteen and sixty-five, and that strict medical examinations are required; and that *bona fide* applications have been secured for at least $500,000, by not less than two hundred persons; and two per cent. on such insurance, together with said guarantee fund of $20,000 has been paid into the treasury, and deposited in trust for the benefit of the beneficiaries of such corporation, association, or society, which certificate of association shall be submitted to the territorial auditor, who shall carefully examine the same, and, if he shall find that the objects and purposes are fully and definitely set forth, and clearly within the provisions of this chapter, and that the name or title is not the same, or does not so closely resemble a title in use as to have a tendency to mislead the public, shall approve the the same. If for either of the aforesaid, or other good and sufficient reasons, the said auditor shall be unwilling to approve the certificate of association, he shall immediately inform the incorporation of the fact, stating his objections fully in writing. If the certificate is sufficient and satisfactory, the said auditor shall indicate his approval thereof under his hand and official seal, and shall forthwith file the same, together with the certificate of association, and other papers accompanying it, in the office of the territorial auditor.

Duty of auditor.

SEC. 605. Upon the filing of the papers as aforesaid the territorial auditor shall issue a certificate of organization of the corporation, association or society, making as a part thereof a copy of all papers filed in his office in and about the organization thereof, and duly authenticated under his hand and seal of the territory; and the same shall be recorded in a book kept for that purpose in the office of the recorder of deeds of the county in which the principal place of business of such corporation, association, or society is located.

Auditor's certificate

SEC. 606. A corporation, association, or society, organized under the provisions of this chapter, shall be a body corporate and politic, by the name stated in the certificate of organization, and by that name they and their successors may have succession, and shall be persons in law capable of suing and being sued: and may have power to make and enforce contracts in relation to the legitimate business of their corporation, association, or society; may have and use a common

Powers

seal, and may change and alter the same at pleasure, and they and their successors in their corporate name shall in law be capable of taking, purchasing, holding and disposing of real and personal estate for the purpose of their association or society; may make by-laws not inconsistent with the organic act and laws of this territory, or the constitution and laws of the United States, which by-laws shall define the manner and form of electing directors, trustees or managers and officers of the corporation, association, or society, and the qualifications and duties of the same, with terms of office, not exceeding three years, and also the qualifications and privileges of the members thereof.

Directors, trustees, or managers

SEC. 607. The affairs of all corporations, associations, or societies, organized or doing business under the provisions of this chapter, shall be managed by not less than five directors, trustees, or managers, a majority of whom shall be residents of this territory, who shall be elected from and by the members at such time and place, and for such period, not exceeding three years, as may be provided for in the by-laws, and may be eligible for re-election: *Provided*, That, as near as practicable, an equal number shall be elected each year. Whenever directors, trustees, or managers shall be elected a certificate under the seal of the corporation, giving the name and residence of those elected, and the term of their office, shall be recorded in the office of the recorder of deeds where the certificate of organization is recorded. Vacancies in the board of directors, trustees, or managers, shall be filled in the manner provided in the by-laws, and upon filling any vacancy a like certificate shall be recorded.

Assessment notices

SEC. 608. Assessment notices sent to members by any association or corporation doing business under the provisions of this chapter, shall state the object or objects for which the money to be collected is intended; and no part of the funds collected for the payment of death benefits shall be applied for any other purpose.

Penalty for fraudulent acts

SEC. 609. Any agent, physician, or other person, who shall knowingly secure, or cause to be secured, a certificate of membership on any person, without his knowledge or consent, or by means of misrepresentations, false, fraudulent, or untrue statements, be instrumental in securing a certificate of membership on any aged or infirm person, or in restoring to membership any person not in an insurable condition, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not less than one hundred dollars nor more than one thousand dollars, or be imprisoned in the county jail not less than thirty days nor more than one year, or both, in the discretion of the court; and said certificate or renewal so secured shall be absolutely void.

Surplus or guarantee fund

610. All corporations, associations, or societies, transacting business under the provisions of this chapter, may provide by-laws for the accumulation of a surplus, general or guarantee fund, which may be invested only in the corporate name of the association or society, in the United States, state, territorial or other first-class convertible bonds or stocks, upon which interest has not been in default. Such funds, when so set apart and so invested, shall, with the increase thereof, belong to such corporation, association or society, and not to the directors, trustees, managers, or officers thereof; and shall be used only for mortuary benefits, without assessment, or applied in payment of future assessments, or otherwise used for the promotion of the object or objects for which said funds are specially provided and set apart, and such use shall not be deemed or construed to mean a profit received by members within the meaning of the statutes of this territory.

Not to be deemed insurance companies

SEC. 611. All corporations, associations or societies organized under the provisions of this chapter, or that have heretofore been organized within this territory, under any charter, compact or agreement, or statute of this territory, for the purpose of furnishing life, accident, or permanent disability indemnity or mortuary benefit on the assessment plan, in accordance with the provisions of section 603 of this chapter, shall not be deemed insurance companies, nor subject to the laws of this territory relating thereto, but shall comply with and conform to all the requirements and provisions of this chapter; and shall, by their president and secretary, or like officers, make to the territorial auditor annually, on or before the first day of March, in each and every year, a statement, under oath, for the year ending on the thirty-first day of December next preceding, upon blanks furnished by said auditor, which blanks shall be such as will show its financial condition, assets, liabilities, total amount of indemnity in force, number of members, number whose membership has terminated during the year, and cause thereof, total receipts and sources thereof, total expenditures and objects thereof, and the average amount paid on each certificate, and shall pay into the treasury of the territory, upon filing said certificate, a fee of twenty-five dollars, and the said auditor shall publish said statement in his annual report: *Provided*, That nothing herein contained shall be held to apply to any organization of a purely social, religious or benevolent character, where no commissions are paid, and no salaried officers or agents employed; nor to any local association or society organized under, or subject to, the control of a grand or supreme body; nor to any secret organization having subordinate lodges or councils which has been organized under the laws of this or any other territory, and which is now permitted to do business in this territory.

Not to apply to certain societies

Examination of statements

SEC. 612. The territorial auditor shall have authority to appoint an expert to verify the statements aforesaid by examination of the books and papers of the corporation, and make such other examination as he may deem necessary. The expense of such examination shall be paid by the corporation, association or society having its books examined, and shall not exceed the necessary traveling and hotel expenses of said expert, and reasonable compensation for such expert while engaged in such examination.

Auditor's certificate of examination

SEC. 613. The territorial auditor shall, at the request of any corporation, association or society doing business under the provisions of this chapter in this territory on the assessment plan, make an examination of such corporation, and shall furnish a certificate of the results of such examination, showing all its assets and how invested, and such other particulars as may be deemed necessary to show the character and condition of said corporation, and the necessary expense of the said examination shall be paid by the corporation requesting the same.

Penalty for failure to make statements, etc. or for making false statements

SEC. 614. Whenever any corporation, association or society, organized or having transacted business under the provisions of this chapter, shall neglect or refuse to make its annual statement as required by this chapter, or whenever the said auditor shall find, upon examination as provided in section 612 of this chapter, that any wilfully false or untrue statements in any material respect have been made, or that the business of the corporation, association or society has been conducted fraudulently, or in willful violation of any of the provisions of this chapter, or that the corporation has transacted business different from that authorized by its certificate of incorporation, he shall communicate the fact to the district attorney, whose duty it shall be to apply to the district court where its principal office is located for an order requiring the officers or directors, trustees or managers of such corporation to show cause why they should not be removed from office, or its business closed; and the court shall thereupon hear the allegations and proofs of the respective parties, and if it shall appear to the satisfaction of the said court that any one or more of them have been guilty of fraud or any material irregularity, or violation of the law, to the injury of the said corporation, association or society, or of non-compliance with any of the provisions of this chapter, the court shall decree a removal from office of the guilty party or parties, which decree shall forever debar him or them from holding a similar office, and shall substitute a suitable person or persons to serve until the regular annual meeting, or until a successor or successors are regularly chosen or elected; or, if it shall appear to the said court that the interests of its members or the general public so require, the court may decree a dissolution of such corporation, association or society, and a distribution of its effects.

Penalty for failure to comply with provisions of this chapter.

SEC. 615. Any officer, director, trustee or manager, or any other person having charge of the books and papers of any corporation conducting business under the provisions of this chapter, who shall willfully neglect or refuse to comply with the provisions of this chapter, shall be subject to a fine of not less than ten dollars nor more than one hundred dollars for such offence. Any person who shall act as agent, or be instrumental in securing or inducing any person to become a member of any assessment plan corporation, association or society, that has not complied with the provisions of this chapter, shall be deemed guilty of a misdemeanor, and shall be subject to a fine of not less than fifty dollars for each offence, and shall be imprisoned in the county jail located in the county where conviction is secured until such fine is paid, not exceeding thirty days for each conviction.

First statement.

SEC. 616. The first statement to the territorial auditor, as required under the provisions of section 611 of this chapter, shall be made on or before the first day of July, A. D. 1885, and shall embrace all the facts required by the provisions of this chapter, from the date of organization up to the thirty-first of December, 1884. Any corporation, association or society failing or refusing to make the statement required by this section within the time specified, shall be proceeded against in the same manner, and shall be subject to the same penalty, as provided in section 614 of this chapter.

Foreign corporation.

SEC. 617. Any corporation, association or society organized under the laws of any other territory or government, for the purpose of furnishing life, accident or permanent disability indemnity upon the assessment plan, where benefits are paid to such as have an insurable interest only, complying with the provisions of this chapter, so far as applicable, and showing that it has deposited with the proper authority or department of the territory or state government under which it is incorporated, not less than fifty thousand ($50,000) dollars as a guarantee fund for the security of its members, shall be licensed by the territorial auditor upon the payment into the territorial treasury of a fee of $100, to do business in this territory, provided such corporation, association or society shall first deposit with the said auditor a certified copy of its charter or articles of incorporation, a copy of its statement of business for the preceding year, sworn to by its president and secretary, or like officers, showing a detailed account of expenses and income, the amount of life indemnity in force, its assets and liabilities, in detail, number of members, and a certificate, sworn to by the president and secretary, or like officers, setting forth that an ordinary assessment upon its members is sufficient to pay its maximum certificate of membership to the full limit named therein; a copy of its policy or certificate of membership, application and by-laws, which must show that death losses are in the main provided for by assessments upon the surviving members; and it shall legally designate a person or agent residing in the territory to receive service of process for said corporation.

Duty of auditor in case of failure to comply with law, or if auditor doubts solvency of society.

SEC. 618. Such corporations, associations or societies shall pay into the treasury of the territory, upon filing each annual statement, a fee of $25, and in the event of its failure to make such statement on or before the first day of March of each year, the auditor shall revoke its license, and thereafter, or until such annual statement is made, it shall be deemed to be doing business unlawfully in this territory. When the territorial auditor shall have reason to doubt the solvency of any foreign corporation, association or society acting under the provisions of this chapter, and when he is not fully satisfied with the certificate of the insurance commissioner, or other like officer, of the state, territory or government, of its organization, he may proceed to make an examination, as provided in this chapter, for the examination of corporations organized in this territory; and should he find that it has made fraudulent or untrue statements, or that it is conducting its business in an irregular and illegal manner; or if he shall be of the opinion that any such corporation in this territory is conducting its business fraudulently, or is not in good faith carrying out its contracts with its members in this territory, he shall report the same to the attorney-general, who shall thereupon commence proceedings, by writ of *quo warranto*, against such corporation or association, requiring it to show cause why its license to do business in this territory should not be revoked. And any such foreign corporation or association now doing business in this territory that shall refuse or neglect to comply with the provisions of this chapter, within the space of ninety days after passage thereof, shall be deemed to be doing business unlawfully; and if any officer, agent or employe of any such corporation or association shall do business in this territory or assist in, or knowingly permit the same, unless such corporation or association has complied with the provisions of the laws of this territory applicable to the same, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $50 nor more than $1,000, or be imprisoned in the county jail not less than thirty days nor more than one year, or both, in the discretion of the court

NOTE.—Chapter XXX act of March 8, 1885.

CHAPTER XXXI.

INCORPORATION OF INSTITUTIONS OF LEARNING.

Sec. 619. Who may incorporate.
Sec. 620. Declaration, how made.
Sec. 621. What declaration shall set forth.
Sec. 622. Term of office of trustees.
Sec. 623. Number of trustees increased or diminished.
Sec. 624. Religious societies may incorporate as institutions of learning.
Sec. 625. Powers of the corporation.
Sec. 626. Right of succession.
Sec. 627. May confer literary honors.
Sec. 628. Privileges conferred by diploma.

SEC. 619. That hereafter, any five or more persons may form a corporation for the purpose of organizing, conducting, and maintaining any seminary, college, or university in this territory.

13th ses p 44
How many may incorporate

SEC 620. That said persons shall make a declaration, in writing, which they shall sign and acknowledge as provided by law for making acknowledgments to deeds, and cause the same to be recorded in the office of the recorder of deeds in the county where such institution is located, and shall file with the secretary of the Territory of Montana a copy thereof.

Declaration.

SEC. 621. In said declaration there shall be stated:

Contents of declaration

First—The name of the corporation.

Second—The number of trustees who shall have the general care of the said institution, which number shall not be less than five, nor more than fifteen, and by what body to be elected.

Third—The number and names of first trustees.

Fourth—The place of business of the institution.

Fifth—The particular character of the institution.

SEC. 622. Said trustees may be divided into three classes. One class, at the first election, shall be chosen for one year, and one class for two years, and one class for three years; thereafter, one class shall be elected each year.

Three classes of trustees

SEC. 623. The number of trustees may be increased or diminished by the body who elects the same: *Provided*, That the number is not increased to a number larger than fifteen, or diminished to a number less than five.

Number of trustees may be changed.

SEC. 624. The said corporation may be formed under the auspices of any church or society. If formed under the auspices of any church organization, the trustees may be elected by any presbytery, conference, convocation, or other ruling body of such church. If by any society, then by the members of the society.

May be under auspices of church, etc.

SEC. 625. The corporation so formed shall have the power of employing teachers or professors, to fix their salaries, to prescribe the conditions under which pupils may be admitted to the seminary, college, or university, created by said corporation, what studies they shall pursue; and make rules for the general government and management of the institution so created, not in violation of law. The trustees of said corporation shall have the power to elect one of their number president of the board, and to supply his place in case of death, resignation, or removal; to fill the

Powers.

vacancies in the board of trustees until the next meeting of the body authorized to elect the same; to appoint a president or principal of the institution organized or created, who shall hold his office at the pleasure of the said board of trustees, and whose duties shall be such as they may prescribe; to elect one of their number secretary, and any person they may think advisable, treasurer of the same. The treasurer may be a trustee, or not, as the board shall elect. The trustees may select such teachers and other officers of the institution created as they may deem advisable, and may make all necessary by-laws for their government.

Same. SEC. 626. The corporation so formed shall have power of perpetual succession, the right to use a common seal, the right to sue and be sued, the right to purchase, or receive by gift, grant, devise, or bequest, any property, real or personal, for the purpose of conducting and maintaining said institution, and which may be necessary therefor or proper for that purpose; the right to borrow money, execute promissory notes and mortgages upon its property, and to make contracts and contract debts equal to, but not in excess of, the value of the property owned by the same.

Diplomas. SEC. 627. The corporation so formed shall have the right to grant literary honors, such as are usually granted by such institutions, and, in testimony thereof, to give suitable diplomas under its seal, and under the signatures of such officers as the trustees may deem proper and expedient.

Same. SEC. 628. Every diploma granted by such corporation shall entitle the possessor to all immunities which by usage or statute are allowed to possessors of similar diplomas granted by any other like institution of learning in the United States.

NOTE.—Chapter XXXI, act of March 3rd, 1883

CHAPTER XXXII.

CORPORATIONS FOR BUILDING PURPOSES.

Sec. 629. How capital stock paid in.
Sec. 630. May own or lease real estate.
Sec. 631. Dues and fines—how collected.
Sec. 632. Surplus moneys may be loaned to members.
Sec. 633. Corporations heretofore organized may accept the provisions of this chapter.

Sec. 634. Companies organized under the provisions of chapter XXV. may avail themselves.

SEC. 629. Corporations may be organized for the purpose of erecting buildings and improving land, and the stockholders thereof shall have the right to pay for their shares of stock in fixed periodical installments, but the capital stock shall be paid in full within ten years from the date of incorporation. 13th ses p 11 For what purpose organized.

SEC. 630. Any corporation organized under the provisions of this chapter shall have the power to purchase, hold, or lease, any real estate, or buildings, or improvements, on land not owned by such corporation, and may do all acts necessary and proper to be done in order to effect these purposes. Real estate

SEC. 631. Such corporations shall have the power to levy, assess, and collect from its members or stockholders, all sums of money, installments on shares, dues, fines, interest on loans or premiums, bid by such members or stockholders for priority of right to a loan, in such manner and at such times as the by-laws thereof may provide; Dues, etc

SEC. 632. Such corporations shall have the power to loan to the members or stockholders thereof any surplus moneys, under the regulations specified in the by-laws thereof, but such stockholder or member shall be required to give proper security therefor. Loans

SEC. 633. Any corporation now organized and doing business in this territory, may accept the provisions of this chapter by a vote of the stockholders thereof in pursuance of its by-laws and the statutes of this territory, and when after such a vote, a certificate of such acceptance, duly signed by the officers thereof, shall be filed in the office of the secretary of the territory, said corporation shall be entitled to the benefit of this chapter. Certificate.

SEC. 634. All the provisions of chapter XXV, of the Fifth Division, except such as may conflict with this chapter, shall be applicable to all corporations organized under this chapter. Provisions of chapter XXV. applicable.

NOTE.—Chapter XXXII act of March 7th, 1883

CHAPTER XXXIII.

BUILDING AND LOAN ASSOCIATIONS.

Sec. 635. Certificate: what same shall contain; where recorded.

Sec. 636. Secretary of territory to issue license.

Sec. 637. *Meeting of subscribers; number and term of trustees.*
Sec. 638. *Vacancies.*
Sec. 639. *Officers shall be stockholders.*
Sec. 640. *Certificate after first meeting.*
Sec. 641. *Certificate by secretary of territory.*
Sec. 642. *When license deemed revoked.*
Sec. 643. *Corporate powers.*
Sec. 644. *Management by trustees; quorum.*
Sec. 645. *Officers: compensation.*
Sec. 646. *Bonds of treasurer and secretary.*
Sec. 647. *Shares of stock, subscriptions, transfer, etc.*
Sec. 648. *Upon what terms stockholder may withdraw.*
Sec. 649. *Meetings of trustees; loans offered.*
Sec. 650. *Loans confined to stockholders.*
Sec. 651. *Loans: how secured.*
Sec. 652. *Payment of interest, etc.*
Sec. 653. *Payment prior to maturity.*
Sec. 654. *Trustees hold until successors are elected.*
Sec. 655. *May purchase mortgaged property.*
Sec. 656. *Corporate life may be extended.*
Sec. 657. *Life of corporation under former law may be extended.*
Sec. 658. *Former corporations not affected.*
Sec. 659. *Corporations under former law may reform under this chapter.*
Sec. 660. *Effect of such reformation.*
Sec. 661. *Not taxable for mortgages.*
Sec. 662. *Fees for recording mortgages.*
Sec. 663. *Dissolution.*
Sec. 664. *Proceedings to effect dissolution.*
Sec. 665. *Summons.*
Sec. 666. *Answer.*
Sec. 667. *Trial.*
Sec. 668. *Decree; where filed and recorded.*
Sec. 669. *Effect of dissolution.*

Certificate, what same shall contain and where recorded.

SEC. 635. That when any five or more persons may desire to become incorporated as a mutual building and loan association, for the purpose of aiding in building homesteads and loaning money to the members of such association, only they shall make a certificate to that effect in writing, signed and acknowledged before a proper officer in the manner provided for the acknowledgment of deeds, in which certificate shall be stated the name of such association and the purpose for which it is formed, the amount of its capital stock, the number of shares and the par value of each share of its capital stock, the name of the city, town or village, and county where the principal part of its business shall be transacted; the term of its existence and the name of nine persons who shall act as trustees and manage the affairs of such association until the first annual meeting of its stockholders, which certificate shall be filed in the office of the secretary of the territory.

Secretary of territory to issue license.

SEC. 636. Upon the filing of such certificate in the office of the secretary of the territory he shall issue to such persons named therein as trustees a license to take subscription for the capital stock of such association at such time and place as they may determine: *Provided*, That such license shall not be issued to the trustees of more than one association having the same name.

Meeting of subscribers

SEC. 637. That when fifty shares or more of the capital stock of such association shall be subscribed for, the said trustees shall call a meeting of the subscribers for the purpose of electing nine trustees, adopting by-laws for such associations and the transaction of such other business as may be required, which meeting shall be the first annual meeting of the stockholders of such association; notice of such meeting shall be given by depositing in the postoffice at the place where the principal part of the business of such association is to be transacted, at least five days prior to holding the same, a written or printed notice stating the time, place and object of such meeting, enclosed in an envelope or wrapper, and addressed to each subscriber, with postage thereon paid. At such meeting there shall be elected nine trustees by a vote of a majority of the persons who have subscribed for stock, represented at such meeting by subscribers in person or proxy. The trustees so elected by a majority of the stockholders shall be divided into three classes, as follows: The term of office of the three first elected shall be for the period of three years; the term of office of the second three elected shall be for the period of two years, and the term of office of the three last elected shall be for the period of one year. Thereafter, annually, at a meeting of the stockholders, three trustees shall be elected whose term of office shall be for the period of three years.

Number and terms of trustees

Vacancies

SEC. 638. In case of a vacancy in the office of any trustee, the remaining trustees may fill the same by appointment until the first annual meeting thereafter, when such a vacancy, if the term be not expired, shall be filled by the election of the stockholders.

Officers shall be stockholders.

SEC. 639. The trustees and officers of such association shall be stockholders therein.

Certificate after first meeting.

SEC. 640. Within ten days after holding said first annual meeting of stockholders, the trustees licensed as provided in section 636 of this act shall make a certificate showing the fact of holding such annual meeting pursuant to call, and notice given as provided in section 637 of this act, the names and respective terms of office of the trustees elected thereat, the names of the subscribers for the stock of said association and the number of shares subscribed for by each, which certificate shall be subscribed and verified by at least a majority of such licensed trustees and filed in the office of the secretary of the territory.

Certificate by secretary of territory.

SEC. 641. The secretary of the territory shall, upon receiving the certificate provided in section 640, file and preserve the same in his office and thereupon issue a certificate of the complete incorporation of such association attaching thereto and making part thereof a copy of all papers filed in his office relating thereto under the provisions of this act, duly authenticated under his hand and the seal of the territory; and the same shall be recorded at the expense of said association in the office of the county clerk of the county wherein the principal part of the business of such association is transacted; and the recording thereof shall fully incorporate such association.

When license deemed revoked.

SEC. 642. In case such association be not fully incorporated as provided in this act within one year after the issuing of said license, the same shall be deemed revoked and any proceeding thereunder shall be unlawful.

Corporate powers.

SEC. 643. Every corporation formed under the provisions of this act has power to have succession by and in its corporate name for the period limited in its certificate of incorporation, to sue complain implead or defend in any court of law or equity, and may be sued or impleaded in any court of law or equity; to make and use a common seal and alter the same at pleasure, to purchase, hold, and convey at pleasure such real estate and personal property as the purposes of such corporation may require; to make by-laws not inconsistent with the provisions of this act, or any existing laws for the management of its property, the regulation of its affairs, and the transfer of its stock; *Provided*, That all its by-laws shall be approved by the holders of at least a majority of its stock subscribed for and every corporation formed under the provisions of this act shall have and may exercise such further powers and functions as are herein granted or necessarily implied by the provisions of this act.

Management by trustees, quorum

SEC. 644. The management and control of the property and business of every association formed under the provisions of this act shall be vested in its board of trustees, a majority of whom shall constitute a quorum for the transaction of business.

Officers

Compensation.

SEC. 645. Such association shall have a president who shall be chosen from the board of trustees, a secretary and treasurer, and such other officers as provided by its by-laws. All of such officers shall be chosen by the board of trustees in such manner and for such terms as may be prescribed by its by-laws: *Provided*, that neither the trustees nor any other [officer] of such association shall be paid any compensation for services except its secretary, who shall receive such compensation as provided by the by-laws.

Bonds of treasurer and secretary.

SEC. 646. The treasurer of such association shall give a bond in a sum equal to double the amount of funds of such association which may come into his possession, conditioned for the safe keeping and the delivery thereof, according to the orders of the board of trustees, the amount of which bond shall be fixed by the board of trustees. Such bond shall be signed by at least three good and sufficient sureties, approved by the board of trustees. The secretary may also be required to give bonds for such amount as the trustees may determine.

Shares of stock, subscriptions, transfer, etc.

SEC. 647. The par value of the shares of stock shall be one hundred dollars each, and shall be deemed personal property, transferable upon the books of the corporation in such manner as may be provided by the by-laws. Subscriptions therefor shall be made payable to the association in such periodical instalments and at such times as shall be prescribed by the by-laws: *Provided*, That no periodical payments shall be required exceeding two dollars on each share, and every share of such stock shall be subject to a lien for the security of unpaid instalments and other charges incurred thereon under the provisions of the by-laws, and the by-laws shall prescribe the manner and the time of enforcing such lien. New shares of stock may be issued in lieu of shares withdrawn or forfeited. The stock may be issued in one or in successive series in the manner and in such amount not to exceed the total capital stock as the board of trustees may determine.

Upon what terms stockholder may withdraw.

SEC. 648. That any stockholder desiring to withdraw from said corporation, shall have power to do so by giving sixty days written prior notice thereof, and at the expiration of sixty days from date of service of such notice, such stockholder shall be entitled to receive the amount paid in by him, and interest thereon at such rate per annum or such proportion of the profits thereon as the by-laws may determine, less any initiation fee, and all fines and other charges assessed against such stock pursuant to the provisions of the by-laws: *Provided*, That at no time shall more that one-half of the funds in the treasury of the corporation be subject to the demand of withdrawing stockholders without the consent of the board of trustees, and that no stockholder shall be entitled to withdraw whose stock is held in pledge for security *And provided further*, That the withdrawing stockholders shall be paid in the order in which notice of withdrawal had been given. That upon the death of a stockholder, his or her legal representatives shall be entitled to the full amount paid in by such stockholder on all shares not borrowed upon or pledged to the corporation as collateral security and interest at such rate as prescribed by the by-laws, first deducting all fines and charges that may be due on said stock, but no fines shall be charged upon the stock of a deceased member from and after his or her decease, unless the legal representative of such decedent assumes the future payment of the dues and assessments thereon.

Meeting of trustees; loans offered

SEC. 649. The board of trustees shall hold such stated meetings not oftener than once each month, as the by-laws may prescribe, at which meetings the money in the treasury, if one hundred dollars or more, shall be offered for loan in open meeting and the stockholder who shall bid the highest premium or interest for the preference or priority of loan, shall be entitled to receive a loan not exceeding one hundred dollars per each share of stock held by such stockholder less the premium bid.

Loans confined to stockholders.

SEC. 650. The funds of such corporation shall be loaned only to *bona fide* stockholders therein, and in no case shall a loan be made exceeding one hundred dollars per each share of stock held by the borrower, but the by-laws of every such corporation may prescribe such fractional part of one hundred dollars per share as may be loaned to any stockholder.

Loans, how secured.

SEC. 651. Every loan shall be secured by proper mortgage or conveyance of good and sufficient real estate, unencumbered except by prior loans of such corporation; *Provided*, That the shares held by any stockholder may be received as security to take the amount of the withdrawal value thereof.

Payments of interest, etc.

SEC. 652. In case of non-payment of installments or interest and fines, by borrowing stockholders, for the space of three months, payment of principal and interest and fines, without deducting the premium paid or the interest thereon, may be enforced by proceedings against the securities, according to law, upon the order of the board of trustees.

Payment prior to maturity

SEC. 653. A borrower of money from such association may repay the same at any time, and in that event shall be allowed such a proportionate amount of the premium paid at the time of borrowing as the board of trustees may deem equitable or the by-laws may prescribe; *Provided*, That the amount of premium so refunded shall be determined as nearly as practicable on the basis of the maturity of the series of stock in which the shares loaned upon were issued.

Trustees hold until successors are elected

SEC. 654. Associations incorporated under the provisions of this act shall not cease or expire from neglect to elect trustees or other officers at the time mentioned in this act or its by-laws, and all officers elected by such corporation shall hold their offices until their successors are duly elected and qualified.

May purchase mortgaged property

SEC. 655. Any association incorporated under the provisions of this act, is hereby authorized to purchase at any sheriff's or other judicial sale, or at any other sale, public or private, any real estate upon which said corporation may have or hold any mortgage, lien or encumbrance, or in which said corporation may have an interest, and the real estate so purchased to sell, convey, lease or mortgage at pleasure.

Corporate life may be extended

SEC. 656. Any association incorporated under the provisions of this act may extend the duration of time for which [such] association was organized by a majority of the capital stock of such association at any annual or called meeting of the stockholders thereof. Thereupon the board of trustees shall cause to be made a certificate showing the fact of holding such meeting, the whole amount of the stock of such association outstanding, the names and amounts held by each stockholder represented at such meeting in person or by proxy, the whole amount voted in favor of the extension of the existence of such association and the time to which the same was so extended, which certificate, duly signed and verified by a majority of such board of trustees, shall be filed in the office of the secretary of the territory, who shall thereupon issue his certificate certifying and showing the extension of time of duration of such association, and the same shall be recorded as provided in section 641 of this act.

Life of corporation under former law may be extended.

SEC. 657. Any corporation of the nature provided for in this act, heretofore incorporated under the laws of this territory and desiring to extend the duration of time for which it was incorporated, is hereby authorized so to do in the manner provided in section 656 of this act, and thereupon it shall be deemed as incorporated under and thenceforth shall be governed by provisions of this act in the same manner as if said association had been originally incorporated hereunder so far as the same may be applicable to the conditions thereof.

Former corporations not affected

SEC. 658. Nothing in this act shall be construed to affect the validity of any of the operations of any building and loan association incorporated under the laws of this territory prior to the passage of this act.

Corporations under former law may reform under this chapter.

SEC. 659. That any corporation of the nature herein provided for, now existing in this territory, desiring to reform its condition and make the same conform to the provisions of this act, shall first obtain and preserve the written consent of all its stockholders thereto, and may thereupon call a meeting of the stockholders in the manner provided in section 637, and at such meeting elect a board of nine trustees, as therein provided, and make its by-laws and all other conditions of such corporation conform to the provisions of this act; and thereupon a majority of the trustees managing the affairs of [the] corporation thus reformed, shall make and file in the office of the secretary of the territory such a certificate as required in section 640, together with a certificate conforming to all the requirements of section 635, except the names of the persons "who shall act as trustees and manage the affairs of such association until the first annual meeting." Upon receiving the certificate mentioned in this section the secretary of the territory shall issue his certificate in the manner provided in section 641, and in addition shall state that such corporation existed theretofore and is thereby reformed to conform to the provisions of this act: *Provided*, The name of such corporation shall not be changed

SEC. 660. That the validity of all proceedings, contracts, deeds, mortgages or other conveyances or contracts of such corporation shall in no wise be affected by its reformation as provided in section 659 of this act.

Effect of such reformation.

SEC. 661. No building and loan association incorporated in accordance with the provisions of this act or previously organized shall be subject to taxation for mortgages held by such association upon property that is assessed and taxed in the hands of the mortgagors.

Not taxable for mortgages

SEC. 662. When any building and loan association incorporated in accordance with the provisions of this act, or previously organized, shall furnish to the county clerk and recorder of the county in which its principal place of business is located a bound volume of blank mortgages such as are used by such association, the fee for filing, indexing and recording of mortgages executed to such association shall thereafter be one dollar and fifty cents, and no more.

Fees for recording mortgages.

SEC. 663. Any association incorporated under the provisions of this act, or heretofore incorporated and reformed to comply with the provisions of this act, may be dissolved by the decree of the district court having jurisdiction in the county where the principal place of business of such association is located in the manner provided in section 664 of this act.

Dissolution.

SEC. 664. Any corporation mentioned in section 663 desiring to be dissolved, may, at any meeting of its stockholders, vote upon the proposition of its dissolution; and if it be found that a majority of its capital stock owned by individual stockholders is voted in favor of its dissolution, the trustees may file complaint in said court showing that all the provisions of this act have been substantially complied with in the organization and management of such association; that its affairs and business have been fully adjusted for dissolution; that all the property and funds thereof have been distributed justly and equitably, so far as stockholders can be found, attaching to such complaint a schedule of the names of all the stockholders, the number of shares of stock owned by each and the amount due to each, designating those paid the same and those not paid, if any; that all sums of money, if any, due to such stockholders have been deposited with the treasurer of such county, subject to their respective orders. Such complaint shall further show all debts and liabilities of such corporation, or that none exist, as the case may be, and that all debts and

Proceedings to effect dissolution

liabilities, if any exist. have been fully provided for. Such action shall be brought in the name of the trustees, as such, against such corporation in its corporate name, and the said complaint shall be ratified by at least a majority of the board of trustees.

Summons.

SEC. 665. Upon filing the complaint mentioned in section 664 a summons shall be issued as in other cases addressed in the following terms, to-wit: To all the stockholders and creditors of a corporation, (inserting the name of such corporation). Said summons shall show the cause of action, and shall be in the form required in civil cases in this territory, and the same shall be published in a newspaper in the manner required for the publication of summons in civil actions, and a written or printed copy thereof shall be sent through the mail in an envelope or wrapper addressed to each stockholder and creditor of such corporation, respectively, with postage thereon prepaid, and the same shall be deposited in the postoffice at the time of the first publication of said summons Proof of publication and mailing of said summons shall be made by affidavit filed in said action.

Answer

SEC. 666. Any stockholder or creditor of such association may appear by answer and show cause why such corporation should not be dissolved.

Trial.

SEC. 667. The court shall try all actions for dissolution of a corporation provided for in this act, under the usual rules of practice in civil actions, and shall require proof of all facts required to be alleged in the complaint. If the court shall find that the allegations of the complaint are true, and that such corporation may be dissolved without injury or injustice to any creditor or stockholder thereof, a decree of such court shall be rendered to that effect dissolving such corporation.

Decree where filed and recorded.

SEC. 668. Upon the dissolution of any corporation by decree of court, as provided in this act, a copy of such decree duly authenticated shall be filed in the office of the secretary of the territory and of the county clerk where the certificate of incorporation was filed and recorded.

Effect of dissolution

SEC. 669. The dissolution of any incorporation as provided in this act shall in no way impair its obligations nor release it or its stockholders from any liabilities.

NOTE —Sections 635 to 669, both inclusive, comprise all of "An act to authorize the organization and incorporation of building and loan associations," approved March 7th, 1887, and said sections are given in the order in which they appear in said act.

CHAPTER XXXIV.

RELIGIOUS, BENEVOLENT, AND OTHER LIKE CORPORATIONS.

Sec. 670. What may be incorporated under this article.
Sec. 671. Resolution to incorporate.
Sec. 672. Execution and filing of certificate.
Sec. 673. Powers acquired.
Sec. 674. Corporation for building purposes.
Sec. 675. Concerning associations previously incorporated.
Sec. 676. Repeal of act of February 9th, 1876, not to affect corporations thereunder.

What societies may be incorporated.

SEC. 670. Associations for the purpose of establishing and conducting churches, hospitals, lyceums, musical and scientific societies, libraries, lodges of free and acccepted Masons, Odd Fellows, Good Templars, granges of Patrons of Husbandry, and all other associations, societies, and orders of like character, agricultural societies, stock growers' associations, and other associations of like character, may become incorporated upon complying with the provisions of this article.

NOTE —Section 670 is as amended by "An act to amend section 292 of the Fifth Division of the Revised Statutes of Montana," approved March 10th, 1887, and comprises all of said act except the introductory clause thereof, which is as follows "Section 1 That section 292, of the Fifth Division of the Revised Statutes of Montana, be and the same is hereby amended to read as follows "

Resolution

SEC. 671. It shall be lawful for any such association, at a regular meeting thereof, or at a special meeting for that purpose called, to adopt, by a vote of two-thirds of the members thereof then present, a resolution to the following effect: *Resolved*, That the trustees of this (*lodge, or other association, as the case may be*), to wit: (*A. B. C. D., etc., giving the names of the duly elected trustees*), be, and are hereby authorized to incorporate this (*lodge, or as the case may be*), and for that purpose to file with the proper officer such certificate as is required by law; and said trustees shall conduct the affairs of the corporation so formed until (*date at which, by the laws of such association, the next annual election of the trustees thereof occurs*).

Certificate

SEC. 672. The trustees, of whom there shall not be less than three, nor more than nine, named in such resolution, may thereupon make, sign, and acknowledge before any officer authorized to take the acknowledgment of deeds in this territory, and have recorded in the office of the recorder of the county in which the affairs of such association are to be conducted, or, if such association shall be a grand lodge or other body having associations subordinate to it in several counties, then, in the office of the secretary of the territory, a certificate in which shall be stated the name, or title, by which the association shall be known, the particular business or objects of the association, the number of trustees to conduct the same, and the time of the annual election of such trustees; and shall attach to such certificate a copy of the resolution required by section 671, of this chapter, which copy shall be certified by the presiding and recording officers and the seal of such association.

Powers.

See sec 488 of this division.

SEC. 673. Upon filing for record such certificate, such association shall become a body politic and corporate, with power to sue and be sued by its corporate name, to have and use a common seal, which may be altered at pleasure, to establish a constitution and by-laws, and make all such rules and regulations as may be deemed expedient for admission to membership therein, and the termination of such membership.

Representative body may incorporate

SEC. 674. The representative body of any religious society in this territory, "as conference, synod, convocation, or the like," may elect not less than three of its members as trustees, with authority to form a corporation for the holding and administering of trust funds for general or specific purposes, or for holding the legal title to real estate for the use of and in trust for the said society; and any religious society may authorize the formation of as many corporations of this character as may be deemed necessary and proper for its purposes. Such persons shall thereupon file a certificate as near as may be to the like effect as that provided for in section 672 of this article in the office of the secretary of the territory, attaching to such certificate a transcript of the record of their election, certified by the presiding and recording officers of the representative body by which they were elected, and thereupon such persons and their successors in office shall become a body politic and corporate, with like powers as other corporations provided for in this article. The tenure of office and succession in office of the members of any corporation formed under the provisions of this section shall be defined and regulated according to such rules and by-laws as the body authorizing such corporation shall prescribe for the purpose.

NOTE —Section 674 comprises all of “An act concerning the trustees of religious corporations,” approved February 25, 1887, except the introductory clause thereof, which introductory clause is as follows “Section 1 That section 296 of the fifth division of the Revised Statutes of Montana be amended by adding thereto the following, which shall be entitled ”

Corporations heretofore formed made valid

SEC. 675. In case any such associations, whether incorporated or not, have, prior to the passage of this article, united together for the purpose of forming, or authorizing the formation of a corporation similar in its character to those authorized by section 674 of this chapter, and the members elected or anthorized for that purpose have incorporated, or attempted to incorporate, themselves and have filed a certificate of such incorporation, such incorporation shall be deemed and held to be as valid, to all intents and purposes, as if the same had been formed after the passage of this article; and if the certificate so filed is not deemed sufficient, such incorporators may file such additional certificate as may be necessary to comply substantially with the provisions of this article, and the title to any property which may have been conveyed to such corporation shall be vested therein according to the true intent and purpose for which the same was originally conveyed.

Repeal.

SEC. 676. That the act entitled “An Act to provide for the formation of corporations other than those for pecuniary profit,” approved February 9, 1876, be, and the same is hereby repealed: *Provided*, That such repeal shall not affect any incorporation formed under said act prior to the passage of this chapter.

NOTE Act February 21, 1879, except where otherwise noted

CHAPTER XXV.

RAILROAD CORPORATIONS.

Sec. 677. Who may incorporate.
Sec. 678. Certificate of incorporation.
Sec. 679. Upon compliance persons to become incorporated.
Sec. 680. Authorized to construct a railroad.
Sec. 681. Capital stock; how paid.
Sec. 682. Sale of stock for unpaid installment.
Sec. 683. Subscriptions and elections of directors.
Sec. 684. Right of way, etc.
Sec. 685. Proceedings to acquire private lands.

Sec. 686. How public lands, roads and highways may be appropriated.
Sec. 687. Road passing through canyon, pass or defile.
Sec. 688. Forfeiture of charter upon failure to commence or complete road.
Sec. 689. These provisions do not apply to railroads through reservations; exception.
Sec. 690. Changes of location or grade.
Sec. 691. Power to borrow money, mortgage property and issue bonds.
Sec. 692. May acquire and convey land.
Sec. 693. May divert road or stream.
Sec. 694. May establish and change principal office.
Sec. 695. Telegraph line; provisions of this article shall not apply to certain lands.
Sec. 696. Territory or municipality not responsible for liabilities of company.
Sec. 697. Liability for injury to employe.
Sec. 698. Increase of capital stock.
Sec. 699. May accept provisions of act of congress; legislature may amend this act and regulate same.
Sec. 700. Restrictions and penalties.
Sec. 701. Annual report to territorial auditor: what to contain.
Sec. 702. Railroad organized under laws of U. S., or any state or territory, may extend line into Montana: proceedings.
Sec. 703. Two or more railroads may consolidate; agreement.
Sec. 704. May lease or purchase other railroad.
Sec. 705. May create, issue and dispose of stock.
Sec. 706. May issue and secure bonds.
Sec. 707. Judgment for material or labor shall be lien.
Sec. 708. Repeal.

Not less than five persons may form R. R. Co.

SEC. 677. Any number of natural persons, not less than five, may become a body corporate for the purpose of locating, constructing, maintaining, and operating railroads, with all the rights, privileges and powers conferred by, and subject to all the restrictions of, this chapter.

SEC. 678. That any number of persons as aforesaid, associating to form a corporation for the purposes named in section 677 of this chapter, shall under their hands and seals make a certificate which shall specify as follows:

Certificate.

First. The name of such corporation, by which it shall be known.

Secondly. The name of the county or counties, and territory or territories, where the termini of said road are to be located, and the county or counties, and territory or territories, through which such road shall pass and the general route of said road.

Thirdly. The amount of capital stock necessary to construct such road.

Such certificate shall be acknowledged before an officer authorized to take acknowledgment of deeds under the laws of this territory, and a duly certified copy of such certificate shall be filed with and recorded by the county clerk and recorder of the county in which is the principal place of business of said company, and the original shall be filed with and recorded by the secretary of the territory; a copy of said certificate, duly certified by the secretary of the territory, under the seal of his office, shall be evidence of the existence of such corporation.

Corporate powers.

Sec. 679. That when the foregoing provisions have been complied with, the persons named as corporators in said certificate are hereby authorized to carry into effect the objects named in said certificate, in accordance with the provisions of this article; and they and their associates, successors and assigns, by the name and style provided in said certificate, shall thereafter be deemed a body corporate, with right of succession, with power to sue and to be sued, plead and be impleaded, defend and be defended, contract and be contracted with, acquire and convey such real and personal estate as may be convenient and necessary to carry into effect the objects of the incorporation, to make and to use a common seal, and the same to alter at pleasure, and to do all needful acts to carry into effect the objects for which it was created; and shall possess all the powers, and be subject to all the rules and restrictions, provided by this article.

May construct and operate railroads

SEC. 680. That such corporations shall be authorized to locate, construct, maintain and operate a railroad with a single or double track, with such side tracks, turnouts, machine shops, offices and depots as they may deem necessary between any points they may select within the counties named in the certificate as termini of such road, and they may construct branches to any point in this territory, and connect or consolidate their road with that belonging to any other person or corporation.

Capital stock.

SEC. 681. That the capital stock of such corporation shall consist of such sum as may be named in the certificate, in shares of one hundred dollars each; such shares shall be regarded as personal property, and shall be subject to execution at law. An installment of ten per centum on each share of stock shall be paid at the time of making the subscription, and the residue thereof shall be paid in such installments, not exceeding twenty-five per centum on the capital stock; which installments shall not be called for more frequently than once in three months, and shall be payable at the principal office of the corporation, to such persons as may be required by the directors.

Sale of delinquent stock

SEC. 682. That if any installment of stock shall remain unpaid for sixty days after the time specified for payment thereof, whether such stock is held by the original subscriber, or his assignee, trustee or successor in interest, the directors may sell the stock so unpaid at public auction for the installment then due thereon, first giving thirty days' public notice of the time and place of sale in some newspaper of general circulation in this territory, and by written notice sent by mail within five days after default made to each stockholder who is in default and whose name appears upon the books of the corporation, directed to him at his address as last reported by him to the secretary of the corporation; and if any residue of money shall remain after paying the amount due on said stock, the same shall, on demand, be paid over to the owner; *Provided*, That where any stock shall have belonged to a person deceased, the claim for installments shall not be liable to sale hereunder until a failure by the personal representative of the deceased owner to pay the installments due in regular course of administration.

Books to be opened for subscriptions

SEC. 683. That the persons named in said certificate of incorporation, or a majority of them, shall be authorized to order books to be opened for receiving subscriptions to the capital stock of said corporation, at such time or times and at such place or places as they may deem expedient, after having given at least thirty days notice in a newspaper of general circulation in this territory, of the time and place of opening books; and as soon as five per centum on the capital stock shall be subscribed, they may give like notice for the stockholders to meet at such time and place as they may designate for the purpose of choosing five or more directors, who shall continue in office until the time fixed for the annual election, which time shall be within six months from the date when such directors were chosen, and until their successors are chosen and qualified; at the time and place appointed directors shall be chosen, by ballot, by such of the stockholders as shall attend for that purpose either in person or by lawful proxies. Each share shall entitle the owner to one vote, and a majority of votes cast shall be necessary for a choice; but after the first election of directors, no person save the personal representatives of deceased persons, as aforesaid, shall vote on any share on which any instalment is in default by reason of the non-payment thereof, after the expiration of the thirty days notice of sale hereinbefore provided for. The persons named in such certificate, or such of them as may be present, shall be inspectors of such election, and shall certify what persons are elected directors, and appoint the time and place for holding their first meeting, a majority of said directors shall form a board and be competent to fill vacancies in their board, make by-laws, and transact all buiness of the corporation. A new election shall be annually held for directors, at such time and place as the stockholders at their first meeting shall determine, or as the by-laws of the corporation may require; and the directors chosen at any election shall, so soon thereafter as may be convenient, choose one of their number to be president, and shall appoint a secretary and a treasurer of the corporation. The directors before entering upon their duties shall each take an oath or affirmation faithfully to discharge his duties; and they may from time to time make such dividends of the actual net profits of said corporation as they may think proper, and shall hold their offices until their successors are elected and qualified.

Election of directors

Oath

Dividends

SEC. 684. That except as against the United States the right of way through the public lands is hereby granted to any railroad corporation, incorporated under this chapter, to the extent of one hundred feet in width on each side of the center of such railroad, and the right and authority are hereby given to such corporation to take, from the public lands adjacent to the line of said road, material of earth, stone, timber and water necessary for the construction and maintenance thereof, and it may appropriate the

Right of way.

same; and ground for station buildings, work-shops, depots, machine-shops, switches, side-tracks, turn-tables, and water-stations, is hereby granted to such corporation not to exceed forty acres for every ten miles of road; and said corporation may enter upon premises necessary to be entered upon, to make a survey of the line of its road, paying any actual damages done thereby.

Proceedings for exercise of right of eminent domain.

See chapter XV. of first division, page 213, et seqt.

SEC. 685. That for the purpose of securing private lands and premises on the line of such road within this territory which may be necessary and proper for the construction thereof, such corporation be and is hereby empowered to enter upon, purchase, take and hold any lands or premises that may be necessary and proper for the construction and workings of said road, not exceeding in width one hundred feet on each side of its center line, unless a greater width be required for the purpose of excavation or embankment; and also any lands or premises that may be necessary and proper for turnouts, standing places for cars, depots, station houses, or any other structures required in the construction and operating of said road; and such corporation shall have the right to cut and remove trees or other material that might, by falling, incumber its road-bed, though standing or being more than one hundred feet therefrom; and in case the owner or claimant of such lands or premises and such corporation cannot agree as to the damages, the amount shall be determined by the appraisal of three disinterested commissioners, who may be appointed upon application by any party to any district court or judge thereof, in any of the judicial districts in which the lands or premises to be taken lie; and said commissioners in their assessments of damages shall appraise such premises at what would have been the value thereof if the road had not been built; and upon the return into court of such appraisement, and upon the payment to the clerk thereof the amount so awarded by the commissioners for the use and benefit of the owner thereof, said premises shall be deemed to be taken by said corporation, which shall thereby acquire full title to the same for the purposes aforesaid; and either party feeling aggrieved by said assessment may, within thirty days, file an appeal therefrom, and demand a jury of twelve men to estimate the damage sustained; but such appeal shall not interfere with the rights of said corporation to enter upon the premises taken, or to do any act necessary in the construction of its road; and said party appealing shall give bonds, with sufficient surety or sureties, for the payment of any costs that may arise upon such appeal to the district court; and in case the party appealing does not obtain a more favorable verdict such party shall pay the whole cost incurred by the appellee as well as its own; and if said corporation shall have tendered to the claimant before the commencement of proceedings to ascertain the damage a sum equal to what said claimant shall finally recover, and upon the appeal before trial shall file with the clerk of said court an offer to confess judgment for that sum, the claimant shall pay the costs; and the payment into court for the use of the owner or claimant of a sum equal to that finally awarded shall be held to vest in said corporation the title of said land and the right to use and occupy the same for the construction, maintaining and operating of the road of said corporation; and in case any of the lands to be taken as aforesaid shall be held by any person residing without the territory or subject to any legal disability, the court or judge thereof may appoint a proper person, who shall give bonds, with sufficient surety or sureties, for the faithful execution of his trust, and who may represent the parties disqualified or absent as aforesaid, when the same proceedings shall be had in reference to the appraisement of the premises to be taken and with the same effect as has been already described; and the title of the corporation to the lands taken by virtue of this chapter, shall not be affected nor impaired by reason of any failure by any guardian to discharge faithfully his trust; and in case it shall be neccessary for such corporations to enter upon any lands which are unoccupied, and of which there is no apparent owner or claimant, it may proceed to take and use the same for the purpose of its said railroad and may institute proceedings, in manner described, for the purpose of ascertaining the value of and acquiring a title to the same; and the court or judge thereof may determine the kind of notice to be served on such owner or owners, and may in its discretion appoint an agent or guardian to represent such owner or owners in case of his or their incapacity or non-appearance. But in case no claimant shall appear within six years from the time of the opening of said road across any land, all claim to damages against such corporation shall be barred: *Provided*, That the district court of the district in which the land or premises are situated shall have exclusive jurisdiction in all judicial proceedings had in pursuance of this section and of section 680 aforesaid, subject to the right to change the venue for cause.

May occupy highway.

SEC. 686. If it shall be necessary in the location of any part of any railroad to occupy any road, street, alley, or public way or ground of any kind, or any part thereof, it shall be competent for the municipal or other corporation, or public officer, or public authorities, owning or having charge thereof, and the railroad company to agree upon the manner and upon the terms and conditions upon which the same may be used or occupied; and if said parties shall be unable to agree thereon, and if it shall be necessary in the judgment of the directors of such railroad company, to use or occupy such road, street or alley, or other public way or ground, such company may appropriate so much of the same as may be necessary for the purpose of such road in the same manner and upon the same terms as is provided for appropriation of the property of individuals by section 685 of this chapter; *Provided*, That every railroad company laying down any such track or tracks upon any such public street, road, alley, or public ground, shall be responsible for injuries done to private property by such location lying upon or near such public ground, which may be recovered by civil action brought by the owner or owners at any time within two years from the completion of such track or tracks, before the proper courts.

May not exclude another corporation from canyon, etc.

SEC. 687. That any such corporation whose right of way, or whose track upon such right of way, extends through any canyon, pass or defile, shall not exclude any other such corporation from a passage through the same upon equitable terms; and in case of disagreement upon application of either of the parties with notice to the other, the same shall be adjusted by a court of competent jurisdiction; and if the passage of any such railroad through any canyon, pass or defile, causes the disuse or change of location of any public wagon road that may traverse the same, damages shall be awarded therefor as provided by section 685, of this chapter,.and if it shall become necessary for any other railroad company passing through the territory to cross or pass any other railroad track or defile already constructed or surveyed, the same may be so done without any compensation therefor, except the actual damage done by so doing; and when two or more companies desire to pass through the same canyon, pass or defile, neither shall exclude the other from passing through the same, and neither shall have any compensation therefor, except the actual damage done by so doing; and should it be necessary that the said companies should use the same track or bed in passing through such canyon, pass or defile, the same may be done without any compensation therefor from one to the other, except the actual damage done by so doing.

Survey, annual work and completion of road

SEC. 688. Any railroad company organized under the provisions of this article, or which may hereafter be organized thereunder, shall be required to complete fifteen miles upon each of its lines, branches, or extensions, each year subsequent to the passage of this act, in the case of companies already organized, and each year subsequent to the filing of articles of incorporation in the case of companies hereafter organized. *Provided*, That organization under said article shall not be deemed to confer any right to any portion of its line as designated in its certificate of incorporation on which a preliminary survey and location shall not have been made; and if such corporation shall fail to comply with the requirements of this section, it shall forfeit its charter and all the rights and privileges conferred by said articles as to any incompleted portion of its line of road. *Provided, further*, That each railroad company shall complete the whole line of its road within five years from the passage of this act, in the case of companies already organized, and within seven years from the date of filing articles of incorporation in the case of companies hereafter organized. Upon the written application of any county attorney of a county through which the line of said road would pass, made to the district court, setting forth the alleged cause of such forfeiture, it shall be the duty of such court, after notice to the corporation, to examine the cause; and if, in its judgment, sufficient cause exists for such forfeiture, to declare and enforce the forfeiture.

Forfeiture.

Roads upon reservations

SEC. 689. That any railroad corporation now or hereafter organized under the laws of this territory, for the purpose of building railroads which extend upon Indian or military reservations within this territory, shall not forfeit its charter, or any rights or privileges, by reason of its failure to build and complete any portion of its road upon such reservations, until a grant of a right of way therefor has been obtained from the United States, or any parties authorized to act therein, and thereafter the provisions of this act shall be applicable to said corporation.

NOTE —Sections 688 and 689 are respectively sections 1 and 2, and comprise all of "An act concerning railroad corporations," approved March 7, 1887, save and except the introductory clause of said section 1, which is as follows. "Section 1 That section 310 of article 3, page 469, of the Revised Statutes of Montana of 1879, relating to railroad corporations and the amendatory act thereof, approved February 26, 1883, be so amended as to read as follows "

May change location or grade.

SEC. 690. That whenever any corporation organized under this article shall find it necessary for the purpose of avoiding annoyance to public travel, or dangerous or difficult curves or grades, or unsafe or unsubstantial grounds or foundations, or for other reasonable causes, to change the location or grade of any portions of its road, such railroad corporation is hereby authorized to make such changes, not departing from the general route prescribed in the certificate of such corporation, and for the purpose of making such change as aforesaid such corporation shall have all the rights, powers and privileges granted by sections 684, 685 nad 686 of this chapter.

May borrow money and secure payment of same.

SEC. 691. That any corporation organized under this article shall have power to borrow money on the credit of the corporation to an amount not exceeding its authorized capital stock, at a rate of interest to be agreed upon by the respective parties, and may execute bonds therefor in sums of not less than one hundred dollars, and secure the payment thereof by mortgage or pledge of the property and income of such corporation. And if the said mortgage shall so provide, it shall be and remain a valid lien upon all of the property of said company of whatever kind then existing or that may thereafter be by it acquired, irrespective of the law now in force relating to chattel mortgages, and the same shall be taken, held and enforced in the same manner as mortgages upon real estate now are held and enforced.

May buy and sell real estate.

SEC. 692. That such corporation may acquire by purchase or gift any lands in the vicinity of its road or through which the same may pass, so far as may be convenient or necessary to secure the right of way, or such as may be granted, to aid in the construction of such road, and convey the same in such manner as the directors may prescribe; and all deeds and conveyances made by such corporation shall be signed by the president under the seal of the corporation.

May divert highway or stream.

SEC. 693. That it shall be lawful for such corporation, whenever it may be necessary in the construction of such road to cross any road or stream of water, to divert the same from its present location or bed: but such corporation shall, without unnecessary delay, place such road or stream in such condition as not to impair its former usefulness.

Principal office.

SEC. 694. That such corporation shall, as soon as convenient after its organization, establish a principal office at some point on the line of its road, and may change the same at pleasure, giving public notice in one or more newspapers in the territory having the largest circulation, and notice to the secretary of the territory of such establishment or change.

May maintain telegraph line

SEC. 695. That any such corporation is hereby authorized to construct, maintain and operate a telegraph on the line of the road. The provisions of this chapter concerning the grant for station buildings, work shops, depots, machine shops, switches, side-tracks, turn-tables and water-stations shall not apply to mineral lands of the United States, or to lands reserved by the United States, nor to any lands as against the United States.

Territory, etc, not responsible for railroad obligations

SEC. 696. That nothing in this chapter shall be construed to make the territory, or any municipality therein, responsible for any debts or obligations of any character which may be contracted by such corporations.

Liability to employe

SEC. 697. That in every case the liability of the corporation to a servant or employe acting under the orders of his superior, shall be the same in case of injury sustained by default or wrongful act of his superior, or to an employe not appointed or controlled by him as if such servant or employe were a passenger.

May increase capital stock

SEC. 698. If the amount of the capital stock shall be found insufficient to enable said corporation to construct its said road, it shall be competent for the directors upon a vote of the stockholders, to increase the stock to such sum as shall cover the expenses of the construction of said road.

May accept provisions of act of congress.

SEC. 699. The said corporations formed hereunder may, at any time hereafter, accept the provisions of any act of congress providing for the creation of bodies corporate for the purposes aforesaid, but such acceptance shall not impair or affect the legal or equitable rights of any creditor as they exist at the time of such acceptance, and having regard to such rights and the legal and equitable rights of the stockholders of any corporation organized hereunder, the legislative assembly of the Territory of Montana, or the legislative department of any state into which said territory may be formed, and which includes any portion of any road constructed by any corporations formed hereunder, may alter or amend this act, and may regulate the same so as to prevent dangerous rates of speed of trains, extortionate charges, danger to passengers, citizens and freight, and unjust discriminations of any such corporations.

Regulations and penalty for violating same.

SEC. 700. If any railroad corporation within this territory shall ask, charge or demand any exorbitant rate of compensation for the transportation of any freight, baggage, express matter or passenger, or make any unjust discrimination in its rates, or shall give to any member of the legislative, executive or judicial department of the Territory of Montana, any ticket, pass, or privilege other than is given to other patrons of its road generally, or shall neglect to provide comfortable and convenient cars or coaches for the transportation of its passengers and their baggage or safe cars for the transportation of express matter and freight, or shall use any highly inflammable oils for lighting any car on its passenger trains, or shall wilfully neglect to keep a table of its passenger tariff and rates of freight conspicuously posted in each depot within this territory, or fail to light its track in any city in this territory; or shall transport within this territory on any of its passenger cars, any oil of vitriol, gun powder, lucifer matches, nytro glycerine, glynon oil, nytroleum or blasting oil, or nitrate oil, or powder mixed with any such oil, or fibre saturated therewith, or duolin or giant powder, or blasting powder, or any other goods of a dangerous nature, or in any incorporated town in this territory run any train at a rate of speed forbidden by the laws of this territory or the ordinances of such city, or run any train over any unsafe bridge, trestle-work, or acqueduct in this territory; or fail to have upon any locomotive in use by it in this territory a bell and steam whistle in fit condition for use thereon; or shall approach any highway, road or railroad crossing without having at a distance of fifty rods therefrom and within a distance of eighty rods therefrom, having sounded said whistle and rang said bell; or shall cross any railroad without bringing its train to a full stop, or shall wilfully fail to make any report herein required, or which may be hereafter required by any law of this territory, shall be deemed guilty of a misdemeanor, and, being thereof convicted, shall be fined for the first offence in the sum of one thousand dollars, and for the second violation of the same provision two thousand dollars, and for every other and further violation of any provision of which it has been twice before found guilty a sum not less than five nor more than ten thousand dollars.

Annual report and what shall same contain.

SEC. 701. It is hereby made the duty of the president or other officer in charge of each and every railroad company having a line of railroads in the

Territory of Montana, to make an annual report to the auditor for the year ending on the 30th day of November preceding, which report shall be verified by the oath or affirmation of such president or other officer in charge, and be filed in the office of the auditor by the 1st day of December in each year, and shall state:

1st. The amount of capital stock paid in.

2d. The amount of capital stock unpaid.

3d. The amount of funded debt.

4th. The amount of floating debt.

5th. Cost of construction.

6th. Cost of right of way.

7th. Cost of equipment.

8th. All other items embraced in cost of road and equipment, not embraced in three preceding questions.

Total cost of road and equipments to date.

9th. Length of single main track, laid with iron.

10th. Length of double main track, and width of guage.

11th. Length of branches, stating whether they have single or double tracks.

12th. Aggregate length of sidings, and other tracks not above enumerated.

Total length of iron embraced in preceding heads.

13th. The maximum grade, with its length in main road, and also in branches.

14th. The shortest radius of curvature, with length of curve in main road and also in branches.

15th. Total degrees of curvature in main road, and also in branches.

16th. Total length of straight line in main road, and also in branches.

17th. Number of wooden bridges, and aggregate length in feet.

18th. Number of iron bridges, and aggregate length in feet.

19th. Number of stone bridges, and aggregate length in feet.

20th. The number of wooden trestles, and aggregate length in feet.

21st. The greatest age of wooden bridges.

22d. The average age of wooden bridges.

23d. The greatest age of wooden trestles.

24th. The number and kind of new bridges built during the year, and length in feet.

25th. The length of road unfenced on either side, and the reason therefor.

26th. Number of engines.

27th. Number of passenger cars.

28th. Number of express and baggage cars.

29th. Number of freight cars.

30th. Number of other cars.

31st. The highest rate of speed allowed by express passenger trains when in motion.

32d. The highest rate of speed allowed by mail and accommodation trains when in motion.

33d. The highest rate of speed allowed by freight trains when in motion.

34th. The rate of fare for passengers charged for the respective classes per mile.

35th. The highest rate per ton per mile charged for the transportation of the various classes of freight, through and local.

36th. The length of new iron laid during the year.

37th. The length of re-rolled iron laid during the year.

38th. The number of miles run by passenger trains.

39th. The number of miles run by freight trains.

40th. The number of passengers (all classes) carried in cars.

41st. The number of tons of through freight carried.

42d. The number of tons of local freight carried

43d. The number of tons of ore, cattle and grain transported.

44th. The value of coin, bullion and dust carried.

45th. From transportation of passengers.

46th. From transportation of freight.

47th. From mail and express.

48th. From all sources.

Total earnings for the year.

49th. For construction and new equipments.

50th. From maintenance of way and structure.

51st. From maintaining and operating motive power and cars.

52d. For transportation expenses, including those of stations and trains.

53d. For dividends, rate per cent. and amount.

54th. All other expenditures, either for management of road, maintenance of way, motive power and cars. and for other purposes.

Total expenditure during the year.

55th. The number and kind of farm animals killed and the amount of damages paid therefor.

56th. A statement of all casualties resulting in injuries to persons, and the extent and the causes thereof, and such other and further information as may be required by the auditor, but if any company shall be unable to furnish the required information the reason thereof shall be given.

The auditor shall prepare and furnish to each railroad company, or to each organization having one or more railroads in charge, blank forms for making the reports required by this article, which blanks may be so prepared by the auditor as to obtain the information required by the foregoing inquiries more in detail or omit such of a historical or permanent character as may have been given in previous report.

May extend line into Montana.

SEC. 702. Any railroad corporation chartered by or organized under the laws of the United States, or of any state or territory whose line of railroad shall reach or intersect the boundary line of this territory at any point, may extend its railroad into this territory from any such point or points to any place or places within the territory and may build branches from any point on such extension or continuation of any such extension or branch. Before making such extension into the territory or building any such branch road, or any such continuation such corporation shall, by resolution of its board of director, to be entered in the records of their proceedings designate the general route of such proposed extension branch or continuation in the manner provided in section 300 of the filfth division of the revised statutes [Section 678 of the fifth division of the compiled statutes] of Montana and file a copy of such record certified by the president and secretary for recording in the office of the secretary of the territory, and cause the same to be recorded in such office; and it shall be the duty of the secretary to record the same when presented for record. Thereupon such corporation shall have all the rights, powers, privileges, immunities, and franchises to make, maintain and operate such extension, and build, maintain and operate such branch or continuation and relating thereto which it would have had had it been incorporated for such purposes, under the general laws of this territory.

Two or more may consolidate.

SEC. 703. Any two or more railroad corporations whose respective lines are wholly or partly within this territory, whether chartered by or organized under the laws of this territory, or of the United States, or of any other state or territory, when their respective lines of road, or any branch thereof so connect within this territory that they may be operated together as one property, may consolidate their capital stock franchises and property and thereby become one corporation by any name adopted by them, which may be that of one of them, upon such terms and conditions as may be agreed upon by them, in the manner following: Articles of agreement shall be entered into by and between such corporations under their respective corporate seals and the signatures of their respective presidents and secretaries containing the terms and conditions of such consolidation and the mode of carrying the same into effect, including the name of the corporation resulting from such consolidation, the amount of its capital stock, the number and amount of shares thereof, the manner of retiring the shares of the capital stock of the corporations so consolidated, or of converting the same into or exchanging it for the capital stock of such resultant corporation, the number which shall constitute the board of directors of such corporation and what officers it shall have and the persons who shall constitute the first board of directors and officers thereof, their term of office and the manner in which their successors shall be elected, and such other matters as may be deemed necessary to perfect such consolidation and as may be agreed upon. Such articles of agreement shall, before the same shall be effectual, be assented to, approved or ratified by the stockholders of the respective companies so consolidated, at a regular meeting of such stockholders, or a special meeting thereof, duly called and held, by resolution adopted by a vote in favor thereof, in person or by proxy, of the holders of at least three-fifths in amount of the outstanding capital stock of such companies respectively. A duplicate or counterpart of such articles of agreement, together with a copy of each of the resolutions so adopted by the stockholders of such companies assenting to, approving or ratifying the same, certified under the corporate seal and the signature of the secretary, and verified by a sworn statement of the president and secretary of the company stating that such resolution was duly adopted by the vote in favor thereof of the holders of a majority in amount of the outstanding capital stock of the company at a meeting of the stockholders thereof, duly held, shall be recorded in the office of the secretary of this territory, and it shall be the duty of the secretary to record the same upon presentation for that purpose, and upon the filing thereof for record, as aforesaid, the company formed by such consolidation shall be a corporation by the corporate name mentioned in such

Agreement.

articles of agreement, and as such shall be perpetual and shall succeed to and have, own, possess, exercise and enjoy all the powers, rights, franchises, privileges, immunities and property of every name and nature possessed by the corporations so consolidated or to which they were entitled at the time of such consolidation, and shall be entitled to have, own, hold, exercise, possess and enjoy all the powers, rights, franchises, privileges and immunities which may at any time appertain to railroad corporations under the general laws of this territory.

May lease or purchase other railroad

SEC. 704. Any railroad corporation whose line is wholly or partly within this territory, or reaches the boundary line thereof, whether chartered by or organized under the laws of this territory or of the United States, or of any other state or territory, may lease or purchase the whole or any part of the railroad or line of railroad of any other railroad corporation, constructed or unconstructed, together with all the rights, powers, immunities, privileges, franchises and all other property or appurtenances appertaining thereto: *Provided*, The railroad or line of railroad so leased or purchased is continuous of or connected with its own line. Before any such lease or purchase shall be effectual it shall be assented to or approved or ratified by the stockholders of each corporation by a vote in favor thereof, at a general or special meeting of such stockholders by the holders of three-fifth's in amount of all the outstanding capital stock of the company; and any such railroad corporation, whether chartered by or organized under the laws of this territory or of the United States, or of any other state or territory, may take, purchase, hold, sell and dispose of, or guarantee the payment of the capital stock, bonds and securities of any other railroad corporation whose line of railroad within this territory is continuous of or connects with its own line: *And provided further*, That leases heretofore made in conformity to the provisions of this act shall, when ratified as herein provided, be held valid in like manner as if made by authority thereof.

May create issue and dispose of stock.

SEC. 705. Any railroad corporation whose line is wholly or partly within this territory, whether chartered by or organized under the laws of this territory or of the United States, or of any other state or territory, shall have power to create, issue and dispose of such amount and character of special, preferred or full paid stock of the capital stock of such corporation as may be deemed advisable by its board of directors.

May issue and secure bonds.

Sec. 706. Any railroad corporation whose line is wholly or partly within this territory, whether chartered by or organized under the laws of this territory or of the United States, or of any other state or territory, shall have authority and power to make, issue, negotiate and deliver its bonds, securities or obligations to such amount bearing such rate of interest and payable at such time or times as it board of directors shall determine and may negotiate, sell, pledge, or otherwise dispose of the same at such price, and on such terms, and in such manner as its board of directors may authorize or determine; and to secure the payment of all or any of such bonds, securities or obligations and the interest thereon; may make, execute and deliver such mortgages or deeds of trust upon all or any part of its property, income and franchises, as the board of directors may determine or direct; and if any such mortgage or deed of trust shall so provide and to that extent it shall so provide, it shall be and remain a valid lien upon property, rights, and franchises of the company of whatever, nature or kind afterwards acquired, as well as upon property, rights and franchises owned or possessed by the company at the time of its execution, irrespective of the law relating to chattel mortgages and any such mortgage or deed of trust shall be taken, held and enforced in the same manner as mortgages of real estate; *Provided*, That the record thereof in the office of the secretary of the territory shall be notice of its existence and contents to all parties whomsoever without any further record thereof whatsoever, and it shall be the duty of the secretary to record in his office any such mortgage or deed of trust when presented for that purpose.

Lien of judgment.

Sec. 707. A judgment against any railway corporation for any injury to person or property, or for material furnished, or work or labor done upon any of the property of such corporation, shall be a lien within the county where recovered on the property of such corporation, and such lien shall be prior and superior to the lien of any mortgage or trust deed provided for in this act.

Repeal.

Sec. 708. All acts and parts of acts inconsistent with this act are hereby repealed.

Note 1.—Sections 702 to 708, both inclusive, are in their order respectively sections 1 to 7, both inclusive, and comprise all of "An act in relation to railroad corporations," approved March 3, 1887.

Note 2.—Chapter XXXV, except where otherwise specially noted, from act of May 7, 1873.

CHAPTER XXXVI.

RAILROAD EQUIPMENTS AND ROLLING STOCK.

Sec. 709. When partial payment only has been made title may remain in vendor.
Sec. 710. Contract to be recorded.
Sec. 711. Mortgage of equipments, etc., to be recorded.
Sec. 712. Satisfaction of mortgage, when made, to be recorded.

SEC. 709. In all cases where railroad equipment and rolling stock may have been, or shall be, sold to any person, firm, or corporation, to be paid for, in whole or in part, in installments, or shall be leased, rented, hired, or delivered, on condition that the same may be used by the person, firm, or corporation purchasing, leasing, renting, hiring, or receiving the same, and that the title to the same shall remain in the vendor, lessor, renter, hirer, or deliverer of the same until the agreed upon price of, or rent for such property shall have been fully paid; such condition in regard to title so remaining in the vendor, lessor, renter, hirer, or deliverer, until such payments are fully made, shall be valid for all intents and purposes as to subsequent purchasers in good faith, and creditors: *Provided*, The term during which the installments or rent are to be paid, shall not exceed ten years, and such contract shall be in writing, duly executed, acknowledged, and recorded, as hereinafter provided.

13th ses p 101

Conditional sales valid.

SEC. 710. Such contract shall be recorded in the office of the secretary of the territory, and in the county in which is located the principal office or place of business of such vendee or lessee, and on each locomotive or car that may have been so sold or leased, the name of the vendor, or lessor, or asignee of the vendor or lessor, shall be marked, followed by the word "Owner," or "Lessor," as the case may be.

Contract to be recorded

SEC. 711. That any mortgage of personal property which constitutes the equipment, or part of the equipment, of any railroad company, may be recorded as provided in section 710 of this chapter, and if the same is *bona fide* the lien thereby created shall be good for all intents and purposes whatever for such length of time as therein provided, not exceeding said period of ten years.

Chattel mortgage if recorded good for not exceeding ten years

SEC. 712. Upon payment in full of the purchase price, and the performance of the terms and conditions stipulated in any such contract as hereinafter stipula-

Satisfaction.

ted, a declaration in writing to that effect shall be made by the vendor, or his assignee, which declaration may be made on the margin of the record of the contract, attested by the secretary of the territory, or county recorder, as the case may be, or the satisfaction may be made by a separate instrument, which shall be acknowledged and recorded in the offices in which the original contract was recorded, and, thereupon, the secretary of the territory and county recorder shall write in the margin of the record the word "satisfied," together with the date of satisfaction, and the page, and book of record of the declaration of the satisfaction.

NOTE—Chapter XXXVI, act of March 7, 1883

CHAPTER XXXVII.

LIVE STOCK KILLED OR INJURED BY RAILROADS.

Sec. 713. Railroad company liable for damages
Sec. 714. Duty of owner, schedule of valuation of stock, etc.
Sec. 715. Duties of railroad company.
Sec. 716. Stock purposely driven upon the railroad track.
Sec. 717. Possession of carcass and preservation of hide.
Sec. 718. Penalty for false oath.
Sec. 719. Duty of railroad companies to adopt precautions against fire.
Sec. 720. Station in each county to be designated and book to be kept describing stock killed.
Sec. 721. Penalty.
Sec. 722. Affidavit of ownership and value to be made.
Sec. 723. Company may deposit value of animal.
Sec. 724. Penalty for driving animals upon track.
Sec. 725. Penalty for making false affidavit.
Sec. 726. Company may skin animal and have carcass and hide.
Sec. 727. Rights may be enforced by civil action.
Sec. 728. Repeal of conflicting acts.
Sec. 729. Takes effect from passage.

12th ses. p 68.
Company liable for damages for stock killed.

SEC. 713. Every railroad corporation or company operating any line of railroad or railway, or any branch thereof, within the limits of this territory, which shall damage or kill any horse, mare, gelding, filley, jack, jenny, or mule, or any cow, heifer, bull, ox, steer, or calf, or any other domestic animal, by running any engine or engines, car or cars, over or against any such animal, shall be liable to the owner of such animal for the damages sustained by such owner by reason thereof.

13th ses. p 52.

Affidavit of owner; valuation of animals

SEC. 714. If the owner of the animal or animals so killed, or his or her authorized agent, shall make affidavit before some officer authorized to administer oaths, that he or she was the owner, or authorized agent of the owner of the recorded brand found upon the animal or animals so damaged or killed at the time of such killing or damaging, and such person shall, within six months after such killing or damaging, deliver such affidavit to the agent or an officer of such company or corporation; or shall make affidavit that the animal damaged or killed, as aforesaid, had no recorded mark or brand, and that he or she is the owner of such animal, describing it; and the corporation or company shall pay to such person delivering such affidavit, or such affidavit last as aforesaid, as follows:

SCHEDULE.

Yearlings, each	$23 00
Two years old, each	27 00
Cows, three years old and over, each	30 00
Steers (unbroken), three years old and over, each	45 00
Steers (work cattle), each	50 00
Sheep, each	3 00

Milch cows, thoroughbred and graded cattle and sheep shall he paid for at their cash value; horses, mules and asses shall be paid for at their cash value; *Provided*, That no railroad company shall, at any time, be required to pay more than the market value of any animal killed or damaged. In all cases where such railroad company or corporation shall kill any of the stock mentioned in this act, and for which no price or sum is fixed, the owner or agent of such stock shall, after the filing such affidavit of ownership, as aforesaid, select some disinterested freeholder of the county where such killing took place, and shall notify such company or corporation of said selection; and such company or corporation shall, within three days thereafter, select some suitable person to act with the person so selected, and the two so selected shall select a third, and the three so selected shall, without delay, proceed to appraise the value of the stock so killed, a majority of which three appraisers shall be sufficient to determine the same, and shall certify, under oath, such appraisment to an agent or superintendent of such company or corporation. In case such railroad company or corporation shall refuse or neglect to appoint such appraiser, it shall be the duty of the justice of the peace nearest to the place, in the county where such stock is so killed, to select one disinterested person as appraiser, and to administer to him an oath to honestly appraise the value of such stock, which appraiser shall, without delay, proceed to act in conjuction with the person selected by the owner, and they shall, at once, proceed as hereinbefore provided for them as appraisers; and such railroad or corporation shall, within thirty days after the receipt of certificate, pay to the owners of such stock so killed, or his or her agent, the amount of such appraisement, together with all the costs as aforesaid; and in all cases where the value of such stock is established by this act, such company or corporation shall pay for such stock within thirty days after the delivery of the affidavit of ownership of stock as hereinbefore provided; and if said company or corporation shall fail to pay for said stock within the time as hereinbefore provided, the owner of such stock may commence proceedings in any court of competent jurisdiction for the amount found to be due and owing for such injured or killed stock, and the findings of such appraisers shall be taken and held to be conclusive evidence of the value and ownership of and injury to such stock, and the court shall add, and tax as costs in the action, the costs of the proceedings upon the appraisement hereinbefore specified.

NOTE.—Section 714 act of March 2, 1883

Books describing stock killed to be kept at some station

SEC. 715. Every railroad company shall keep a book at some station in each county through which their road runs, to be designated by the company, and a notice of the station so designated shall be filed with the county clerks of the counties in which such stations are located; and it is hereby made the duty of said company to cause to be entered in said book, within fifteen days after the killing of any animal, a description. as near as may be, of such animal; its color, age, marks and brands, and shall keep said books subject to the inspection of persons claiming to have animals killed. Should any company fail to keep said book, or to file such notice in the manner herein provided, or to enter therein such description of any animal killed for a period of fifteen days thereafter, such company shall be liable to the owner of such animal to an amount twice the full value thereof.

Penalty for driving stock on track.

SEC. 716. If the owner of any stock shall drive any stock on the line of the track of any such company or corporation, with intent to injure such company or corporation, and such stock shall be killed or injured, such owner shall not receive any damage from such railroad company or corporation therefor, and shall be liable to such company or corporation for all damages such company or corporation may suffer in consequence of such act, and shall also be criminally guilty of felony, and liable to an indictment therefor, and, on conviction, shall be imprisoned in the penitentiary not less than one nor more than five years; but nothing herein shall be construed to prevent any person from allowing his or her stock to pasture on the lands adjacent to the line of such railroads, or to drive his stock over or across any such track at suitable times and places.

Carcass shall belong to company

SEC. 717. In every case of the wounding and killing of any such cattle or sheep, the price of the damages [for which] is fixed by this chapter, the body of such animal shall belong to such company, unless the owner thereof shall elect to take the same in lieu of said damages, or part thereof, within twenty-four hours after said wounding or killing; but in every other case the railway or railroad company may proceed to take care of and preserve the body of said animal; and it shall be the duty of said company to preserve the hide of such animal for at least thirty days after such killing, for inspection, by said railroad or corporations at the station house nearest to the place where such killing occurred. If any agent or employe of such company shall bury any animal killed or wounded by such company, without skinning the same, or shall neglect to keep for thirty days for inspection any hide so taken as herein provided, such agent or employe, or such company, shall be fined in any sum not less than one hundred nor more than three hundred dollars for each and every animal, to be collected in the name of the people of the Territory of Montana, before any court of competent jurisdiction; one-half of the amount so received to go to the county treasury of the county wherein the recovery is had, and the other half to the person at whose instance the suit was brought.

Penalty for making false affidavit.

SEC. 718. Any person falsely making an affidavit of ownership of any animal killed or damaged, shall, on conviction thereof, be liable to a fine of not less than five hundred dollars, and imprisonment in the penitentiary for not less than one year.

Track and each side of road bed to be kept free from dead grass.

SEC. 719. It shall be the duty of all railroad corporations or railroad companies, operating any railroad within this territory, to keep their railroad track, and either side thereof, for a distance on each side of the track or road-bed, so far as it passes through any portion of the Territory of Montana, free from dead grass, weeds or any dangerous or combustible material; and any railroad company or corporation so failing to keep their railroad track free and clear, as above specified, and each side thereof, shall be liable for any damages which may occur from fire emanating from operating railroad, and a neglect to comply with the provisions of this chapter in keeping clear any railroad track, and either side for a distance equal to the space of ground covered by the grant of the right of way for the railroad company: *Provided*, That the same does not exceed one hundred feet on each side of the road-bed, shall be *prima facie* evidence of negligence on the part of any railroad corporation so operating any railroad within the Territory of Montana.

NOTE.—The foregoing sections of chapter XXXVII., except where otherwise specially noted, are from act of February 23, 1881

To designate station and keep book describing stock killed.

SEC. 720. It shall be the duty of any corporation, association, company, person or persons owning, controlling or operating any railroad or branch thereof, in this territory, to designate some station on the line of the same in each county through which it passes at which it shall keep a suitable book, and within thirty days after the killing or injury of any animal or animals caused to be entered therein, the date when, and place where the same were killed or injured, as near as may be, together with a description thereof, including the age, color, and sex of the same and marks and brands upon the same as near as the same can be done which said book shall be kept for the inspection of any person or persons claiming to be interested in the inspection thereof, and shall cause a notice of the station so designated to be filed with the county recorder of the county in which said station is situated.

Penalty for failure to comply with preceding section.

SEC. 721. Any corporation, association or company, person or persons so owning, controlling or operating such railroad or branch thereof, failing to designate said station, file said notice, keep said book and make the entries as provided in the preceding section, shall be liable to the owner or owners of the animal or animals so killed or injured whether negligently done or not, and the court or jury before whom any action is tried for the recovery of damages on account thereof, may in its or their discretion render verdict and judgment for the amount of the value of any such animal or animals so killed or the amount of damages sustained by reason of any injury thereto.

Affidavit of ownership and value.

SEC. 722. In case any such corporation, association, or company, person or persons, shall comply with the provisions of section 720 of this act, it shall be the duty of the owner or owners of any animal or animals, killed or injured as aforesaid, or his agent, or their agent, within thirty days after information shall have reached him or them of the killing or injury of such animal or animals, to make affidavit of such ownership and the market value of the animal or animals so killed, or the amount of damage occasioned by such injury, and deliver the same to the person in charge of the said book or station so designated, and thereupon the said corporation, association, company, person or persons, shall have fifty days within which to pay the amount claimed, and no action shall be instituted for the recovery of the value of or damage to such animal or animals until the expiration of said time.

Value may be deposited

SEC. 723. If any corporation, association, company, person or persons, so owning, controlling or operating any such railroad or branch thereof, shall kill or injure any animal or animals as aforesaid, and tender to the owner or owners thereof, or his or their agent in that behalf, what they shall deem to be the value thereof, or injury thereto, as the case may be, or said railroad, corporation, association, company, person or persons, may deposit with the board of stock commissioners such amount for the owner or owners thereof; and such owner or owners, or his or their said agent shall refuse to accept the same in settlement thereof, then such owner or owners shall pay all costs incurred in any action instituted to recover such value or damage, unless he or they shall recover therein more than the amount so tendered as aforesaid.

Penalty for driving animals upon track

SEC. 724. If the owner, or owners, or his or their duly authorized agent or agents of any animal or animals heretofore mentioned, shall drive the same upon the track of any such corporation, association, company, persons or persons, with the intention to injure it or them, and such animal or animals shall be killed or injured, such owner or owners shall be liable for all injury or damage occasioned by reason of such act, and shall be deemed guilty of a felony and be liable to an indictment therefor, and upon conviction thereof shall be imprisoned in the penitentiary not less than one nor more than five years.

Penalty for making false affidavit

SEC. 725. Any person, or persons, who shall wilfully make any false affidavit of ownership of any animal or animals so killed or injured as aforesaid, shall be deemed guilty of perjury.

Company may have carcass and hide.

SEC. 726. In all cases where any corporation, association, company, person or persons, shall be liable to the owners of any animal killed as provided in this act, they shall be authorized to skin the same and shall be entitled to the carcass and hide thereof, unless the owner or owners thereof shall claim the same, in which event the amount of the value thereof shall be deducted from the amount of damages which would otherwise be due. But in case such corporation, company, person, or persons, so entitled thereto, shall take said carcass and hide, they shall skin such animal or animals and deposit the hide thereof at the station designated for keeping the book and making the entries hereinbefore provided for, during the space of sixty days, for the inspection of persons claiming to be interested therein.

Civil action.

SEC. 727. The rights secured by the provisions of this act may be enforced by action commenced and prosecuted in any court of competent jurisdiction, in accordance with the laws and practice applicable to said courts; and when claimed in the complaint, the plaintiff in said action, if he recover therein, shall also recover his costs, which shall be included in the judgment and enforced and collected as other judgments and costs.

Repeal.

SEC. 728. All acts and parts of acts in conflict with the provisions of this act be and the same are hereby repealed.

Takes effect.

SEC. 729. This act to take effect and be in force from and after its passage.

NOTE.—Sections 720 to 729, both inclusive, are respectively sections 1 to 10, both inclusive, and comprise all of "An act to provide for payment for stock killed by the railroads," approved March 10, 1887.

CHAPTER XXXVIII.

COUNTY BOUNDARIES.

Sec. 730. Missoula County.
Sec. 731. Deer Lodge County.
Sec. 732. Beaver Head County.
Sec. 733. Madison County.

Sec. 734. Jefferson County.
Sec. 735. Lewis and Clarke County.
Sec. 736. Meagher County.
Sec. 737. Gallatin County.
Sec. 738. Choteau County.
Sec. 739. Dawson County.
Sec. 740. Custer County.
Sec. 741. Silver Bow County.
Sec. 742. Yellowstone County.
Sec. 743. Fergus County.

Missoula county.

SEC. 730. All that portion of Montana territory embraced within the following boundaries shall be known as Missoula county, to-wit: Commencing at the point of intersection of the parallel of forty-nine degrees, with the line of longitude, one hundred and sixteen degrees; thence along the said line of longitude south to the summit of the Bitter Root mountains, and along the summit of the Bitter Root mountains in a southerly direction to the summit of the Rocky mountains, and along the said summit of the Rocky mountains to the head waters of the middle branch of Stony creek; thence down the center of the said creek to Hell Gate river; thence up the center of the said Hell Gate river, to a point known as Medicine hill; thence due north to the parallel forty-nine degrees, and along the said parallel of latitude to the place of beginning.

NOTE —Act of January 12th, 1872,

Deer Lodge county

SEC. 731. All that portion of the Territory of Montana embraced in the following described boundaries shall be known as the county of Deer Lodge, to-wit: Commencing in the middle of Hell Gate river, at a point directly opposite the most northerly point of the Medicine Tree hill; thence down the middle of said river to the mouth of Stony creek; thence up the middle of said creek to the middle branch of said creek; thence up the said middle branch of Stony creek to the summit of the Rocky mountains; thence in a southerly direction to the nearest stream of water that empties into the Big Hole river; thence down said stream to the Big Hole river; thence down the middle of said river to to the mouth of Camp creek; thence up Camp creek to its right hand fork; thence up said fork to its source; thence in a direct line to the center of the summit of Table mountain; thence in a direct line to Parson's bridge on the Jefferson river; thence westerly along Parson's toll road, leading from said bridge to Butte City, to a point where said road crosses Fish creek; thence up said Fish creek to the base of the mountains; thence in a northerly direction to the summit of the main range of the Rocky mountains; thence along the summit of said mountains in a northerly direction to a point directly north of Medicine Tree hill; thence due south to the place of beginning in the middle of the Hell Gate river, opposite Medicine Tree hill.

NOTE.—Act of February 5th, 1876. See section 741, "Silver Bow County."

Beaver Head county,

SEC. 732. All that portion of Montana territory embraced within the following boundaries be and the same is hereby created a county to be known as Beaver Head county, to wit: Commencing at a point known as the Beaver Head Rock; thence due south to the territorial line; thence along the southerly boundary of the territory following the territorial line to the first point thereon, where the southerly boundary line of Missoula county strikes the same; thence along the southern boundary line of Missoula county in an easterly direction to the point where the said line of Missoula county strikes the westerly boundary line of Deer Lodge county; thence along the southwesterly line of Deer Lodge county to the Big Hole river; thence down the center of the Big Hole river to the point where the westerly line of Madison county strikes the same; thence along the westerly line of Madison county to the place of beginning.

NOTE.—See additional territory, section 733

Madison county.

SEC. 733. All that portion of Montana territory embraced within the following boundaries be, and the same is hereby, created a county which shall be known as Madison County, to-wit: Commencing at the Beaver Head Rock on Beaver Head river; thence in a right line in a northwesterly direction to the nearest point on Big Hole river; thence up said river to the mouth of Camp creek; thence up Camp creek to the right hand fork thereof; thence up the said right hand fork to its source; thence in a right line to the summit of Table mountain; thence in a direct line to Parson's bridge, on the Jefferson river; thence down the middle of the main channel of the Jefferson river to a point in said river opposite to where the Boulder river puts into the Jefferson river; thence in a right line in a southeasterly direction to the mouth of the Big Canon, on Willow creek; thence in a right line in an easterly direction to Foreman's crossing of the Madison river; thence in a right line east to the top of the main range or ridge of the mountains dividing the waters of the Gallatin and Madison rivers; thence south to the territorial line; thence west along said line to a point where the southeast corner of Beaver Head county strikes said territorial line; thence along the eastern boundary line of Beaver Head county in a northerly direction to the place of beginning; and that the county seat of Madison county is hereby located at Virginia City, in said county.

NOTE—Act of January 12, 1872.

Additional Territory.

First. That portion of the public domain that is described in the act of congress, approved February 17, 1873, entited "An Act to readjust the western boundary of Dakota territory," lying east of an extension due south of the line dividing the counties of Madison and Beaver Head, is hereby attached to and shall hereafter comprise a portion of the county of Madison.

Second. All the remaining portion of said public domain lying west of said line, be, and the same is hereby, attached to and shall hereafter comprise a portion of the county of Beaver Head.

NOTE—Act of February 7, 1874

Jefferson county.

SEC. 734. All that portion of the Territory of Montana embraced within the following boundaries be and the same is hereby created a county known as Jefferson county, to-wit: Commencing at the southeast corner of Lewis and Clark county, on the Missouri river; thence up said Missouri river to the mouth of Jefferson river; thence up said Jefferson river to the "Parson's Bridge" across said river; thence westerly along Parson's Toll Road (leading from said bridge to Butte City), to the point where said road crosses Fish creek; thence up said Fish creek to the base of the mountains; thence northerly to the summit of the main Rocky Mountain range; thence along said Rocky range to the Bald mountains, at the head of Ten Mile creek, or the eastern boundary of Lewis and Clark county; thence easterly along said boundary line to the place of beginning.

NOTE.—See section 741, "Silver Bow County"

Lewis and Clarke county.

SEC. 735. All that portion of the Territory of Montana, embraced within the following boundaries be, and the same is hereby, declared to be Lewis and Clark county, to-wit: Commencing at a point in the Missouri river opposite the mouth of Sun river; thence up said Sun river and the most northerly branch thereof, that heads in the Rocky mountains, to the crest of said Rocky mountains; thence southerly along the crest of said Rocky mountains to the head of Ten Mile creek; thence along the divide between Ten Mile creek and the waters of North Boulder to the divide between the waters of Lump gulch and Ten Mile creek; thence along the said divide to the divide between the waters of Grizzly gulch and Lump gulch; thence along the said divide to the divide between the waters that come into Dry gulch above Helena, and the waters of the Prickly Pear creek to the north peak of the mountains easterly from Helena, known as Dry gulch mountains; thence due east to the Missouri river; thence down the middle of the broadest channel of said Missouri river to the place of beginning. That the county seat of the said Lewis and Clarke county be, and the same is hereby, located at Helena City, Lewis and Clarke county, Montana territory.

NOTE.—Act January 12, 1872.

Meagher county

SEC. 736. All that part of Montana territory embraced within the following boundaries be, and the same is hereby declared to be Meagher county, to wit. Commencing in the middle of the main channel of the Missouri river opporsite the mouth of Sixteen Mile creek; thence easterly along the center of the main channel of said Sixteen Mile creek four miles; thence north to the northern boundary of Gallatin county, thence due east along said line to the one hundred and ninth degree of longitude; thence due north along the one hundred and ninth degree of longitude to the middle of the main channel of the Musselshell river; thence down the middle of the main channel of Musselshell river to a point due east of the mouth of Smith's river. thence due west along the southern boundary line of Choteau county to the middle of the main channel of the Missouri river; thence up the middle of the main channel of the Missouri river to the place of beginning.

NOTE.—Section 736, act of February 7th, 1883, also see section 743, Fergus county.

Gallatin county.

SEC. 737. All that part of Montana territory embraced within the following boundaries be, and the same is hereby created a county to be known as Gallatin county, to-wit: Commencing at the southeast corner of Meagher county on the one hundred and ninth parallel of longitude; thence south along said parallel of longitude to a point in the middle of the Yellowstone river; thence up the middle of the Yellowstone river to the point where it is crossed by the forty-fifth parallel of latitude; thence west along said forty-fifth parallel to the one hundred and eleventh parallel of longitude; thence south along the one hundred and eleventh parallel to the summit of the Rocky mountains; thence westerly along the summit of the Rocky mountains to the southeastern corner of Madison county; thence northerly along the eastern line of Madison county to where it strikes Jefferson river; thence down the middle of Jefferson river to its mouth; thence down the middle of the Missouri river to a point opposite the mouth of Crow creek; thence due east to the place of beginning, on the one hundred and ninth parallel of longitude.

NOTE—Act January 12th, 1872

AMENDMENT. The northern boundary of Gallatin county shall be as follows, to wit: Commencing at a point in the middle of the Missouri river, opposite the mouth of Sixteen Mile creek, thence easterly up the main channel of said Sixteen Mile creek, four miles; thence north to the south boundary of Meagher county; and thence due east along said line to the one hundred and ninth parallel of longitude.

NOTE—Act of February 13th, 1874

Gallatin county extended.

All that part of the Crow Indian reservation included in the treaty now pending before the congress of the United States, shall, upon the ratification of said treaty, be attached to and become a part of Gallatin county, Montana.

12th ses p 124

NOTE—"Gallatin county extended," act of February 14th, 1881. Also see section 742 "Yellowstone county."

Choteau county

SEC. 738. All that portion of the Territory of Montana, embraced in the following described boundaries, shall be known as the county of Choteau, to wit: Commencing at a point in the middle of the main channel of the Missouri river, opposite to the mouth of Deep creek; thence due east to intersect with the one hundred and eighth meridian of longitude; thence due north along the one hundred and eighth meridian of longitude to the intersection of the forty-ninth parallel of latitude; thence due west along the forty-ninth parallel of latitude, to a point directly north of Medicine Tree hill; thence due south to the summit of the main range of the Rocky mountains; thence along the summit of said mountains in a southerly direction to the head of the most northerly branch of Sun river, that heads in the Rocky mountains; thence in an easterly direction down the middle of said branch of

Sun river to its mouth; thence down the middle of the main channel of the Sun river to the middle of the main channel of the Missouri river; thence up the middle of the main channel of the Missouri river to the place of beginning.

NOTE.—Act of February 5th, 1876, also see section 743, "Fergus county."

Dawson coanty.

SEC. 739. All that part of Montana territory embraced within the following boundaries be, and the same is hereby, created a county, to be known as Dawson county, to-wit: Commencing at the intersecting point of parallel of latitude forty-seven degrees, with meridian of longitude one hundred and eight degrees, and thence along said parallel forty-seven degrees to meridian of longitude one hundred and four degrees, and from thence along said meridian north to forty-ninth parallel of latitude, and from thence along said parallel forty-nine degrees to meridian of longitude one hundred and eight degrees, and from thence south along said meridian to place of beginning.

NOTE.—Section 739 acts of January 11th, 1872, and Feb 16th, 1877

13th ses. p. 99

AMENDMENT.—The southern boundary line of Dawson county shall be as follows, to-wit: Commencing ten miles south of the intersecting point of the twenty-seventh degree of longitude west from Washington with the forty-seventh degree of north latitude: thence due west and parallel with said parallel of forty-seven degrees to the Musselshell river; thence following the line of said river to the northern boundary line of Meagher county; thence west along said line to the one hundred and eighth meridian of longigitude. And the northern boundary line of Custer county shall be made to conform with the southern boundary line of Dawson county, so far as said Dawson county extends.

NOTE.—Amendment act of March 8th, 1883.

Custer county.

SEC. 740. All the remaining portion of the territory of Montana not included in the counties before named in this chapter be, and the same is hereby, created a county, to be known as Custer county, and shall be attached, for legislative and judicial purposes, to the county of Gallatin.

NOTE.—Acts of Jan. 12th, 1872, and Feb. 16th, 1877
See "amendment," section 739; also section 742, "Yellowstone county."

13th ses. p. 97. Silver Bow county.

SEC. 741. The territory included within the following metes and bounds shall constitute Silver Bow county, to-wit: Beginning at a point where the first standard parallel north of the base line according to the government survey of public lands in Montana territory intersects the main range of the Rocky Mountains; thence running west along said first standard parallel to the point where said parallel intersects the Deer Lodge guide meridian; thence south six miles, more or less, to the southeast corner of township number four, north of range number ten, west of the principal base and meridian for Montana territory; thence west to the intersection of the middle branch of Stony creek; thence up the middle of Stony creek to the summit of the Rocky Mountains; thence in a southerly direction to the nearest stream of water that empties into the Big Hole river; thence down the center of said river to the mouth of Camp creek; thence up camp creek to its right hand fork; thence up said fork to its source; thence in a direct line to the summit of table Mountain; thence in a direct line to Parson's bridge on the Jefferson river; thence westerly along Parson's toll road, leading from Parson's bridge to Butte City, to the point where said road crosses Fish creek; thence up Fish creek to the head of Belcher's ditch; thence in a direct line to the forks of Little Pipestone creek, near the site of Parson's old toll gate; thence up the north fork of Little Pipestone creek to its source; and thence in a direct line to the nearest point of the summit of the Rocky Mountains; and thence along the summit of the Rocky Mountains to the place of beginning.

The boundaries of Jefferson county are hereby changed to conform to the boundaries herein established.

NOTE—Section 741 act of March 7, 1883

13th ses p. 119

Yellowstone county

SEC. 742. All that portion of Montana Territory lying and situate within the following boundaries, to-wit: Beginning at a point at the confluence of the Yellowstone and Big Horn rivers; thence, following the center of the channel of said Yellowstone river, to a point opposite the first divide east of White Beaver creek, in Gallatin county; thence, following said divide to the summit of the dividing ridge between the Musselshell and Yellowstone rivers; thence, on a straight line, north to the southern boundary of Meagher county; thence east along said boundary to the one hundred and ninth meridian of longitude; thence following said meridian to the Musselshell river; thence down the center of the channel of said river to what is known as the Big Bend to a point where the old Stanley road crosses the Musselshell river; thence on a direct line to the place of beginning, be, and the same is hereby erected into a new county,

13th ses p. 122

which shall be known and called Yellowstone county. The county boundaries of the counties of Gallatin and Custer are hereby altered to conform to the county boundaries of Yellowstone county, as established in this section.

NOTE.—Section 742 act of February 26, 1883.

AMENDMENT. All that portion of the Crow Indian reservation lying between the Wyoming line and the Yellowstone river, and west of the Big Horn river, in Montana Territory, that may hereafter be segregated and thrown open for settlement, shall form a part of Yellowstone county. All that portion of the Crow Indian reservation above described is hereby attached to Yellowstone county for judicial purposes.

NOTE.—Amendment to section 742 act of March 5, 1885.

14th ses. p 83.

Fergus county.

SEC. 743. All that portion of Meagher county lying and situate within the following boundaries, to-wit: Beginning at the northeast corner of said Meagher county, thence west, on the north line of said county, to Arrow creek; thence up said Arrow creek to the intersection of what is known as Surprise creek; thence up said Surprise creek to the center of the divide between the waters of Belt and Judith creeks; thence in a south and southeasterly direction, on the center of the divide between the waters of the Belt, Smith, Musselshell and Judith rivers, to the most easterly point of the Belt mountains, at the Judith gap; thence due east, to the nearest branch of Careless creek; thence down the middle of Careless creek to the Musselshell river; thence down the middle of the Musselshell to the place of beginning, be, and the same is hereby, erected into a new county, to be known as and called Fergus county. That the town of Lewistown, within the boundaries mentioned, shall be the county seat of said county.

The county boundaries of Meagher and Choteau counties are hereby altered to conform to the county boundaries of Fergus county, as established in this section.

NOTE 1.—Section 743 act of March 12, 1885.
NOTE 2.—For boundaries of Park county see special laws.

CHAPTER XXXIX.

COUNTY OFFICERS AND POWERS OF COUNTIES.

Sec. 744. Each organized county to be a body corporate and politic.

Sec. 745. Real estate conveyed to county to be property of county.

Sec. 746. *Powers exercised by county commissioners.*
Sec. 747. *Each county to provide county buildings.*
Sec. 748. *Title of suit for and against county.*
Sec. 749. *Services of processes to be on county clerk and clerk to notify county attorney.*
Sec. 750. *Who are competent witnesses and jurors.*
Sec. 751. *How and when execution may issue on judgment.*
Sec. 752. *Board of county commissioners to consist of three qualified electors.*
Sec. 753. *How and when commissioners elected.*
Sec. 754. *Commissioners to take oath.*
Sec. 755. *To be paid eight dollars per day and mileage.*
Sec. 756. *Powers of commissioners.*
Sec. 757. *Not to organize new township without petition.*
Sec. 758. *To alter or change township organization on petition of majority of voters.*
Sec. 759. *Board to have seal, or scroll and to sit with open doors.*
Sec. 760. *To choose a chairman.*
Sec. 761. *Chairman to administer oath and sign county warrants.*
Sec. 762. *How accounts made and allowed.*
Sec. 763. *How county orders signed.*
Sec. 764. *Appeal may be taken to district court from decision of county commissioners.*
Sec. 765. *How appeal tried in district court.*
Sec. 766. *Board to furnish blanks to assessor.*
Sec. 767. *Board to examine orders returned by treasurer.*
Sec. 768. *Penalty for refusing to perform duty.*
Sec. 769. *To cause plat of new township or alteration to be made and recorded.*
Sec. 770. *Duties of clerk of board.*
Sec. 771. *Clerk to designate amount of account and deliver to any person certified copy or record.*
Sec. 772. *Clerk not to issue county order unless ordered by board.*
Sec. 773. *Clerk to transmit to secretary of the territory names and boundaries of townships.*

Sec. 774. Clerk to receive a reasonable compensation.
Sec. 775. County commissioners may transfer funds from one fund to another.
Sec. 776. Bond of county commissioner.
Sec. 777. Judicial and other powers of county commissioners.
Sec. 778. Annual financial statement of the county.
Sec. 779. Statement in duplicate; to be recorded and published.
Sec. 780. If no newspaper report to be posted.
Sec. 781. Sinking fund.
Sec. 782. Contingent fund.
Sec. 783. Surplus paid on warrants.
Sec. 784. Balance certificates not to be issued.
Sec. 785. Stated and special meetings of board.

Powers of counties

SEC. 744. That each organized county within this territory shall be a body corporate and politic, and, as such, shall be empowered for the following purposes.

First. To sue and be sued.

Second. To purchase and hold real and personal estate for the use of the county, and lands sold for taxes, as provided by law.

Third. To sell and convey any real or personal estate owned by the county, and make such order respecting the same as may be deemed conducive to the interests of the inhabitants.

Fourth. To make all contracts and do all other acts in relation to the property and concerns necessary to the exercise of its corporate or administrative powers.

Fifth. To exercise other and further powers as may be especially conferred by law.

Real estate

SEC. 745. Any real or personal estate heretofore, or which may be hereafter, conveyed to any county, shall be deemed the property of such county.

Commissioners.

SEC. 746. The powers of a county as a body corporate and politic shall be exercised by a board of county commissioners therefor.

Court house, etc.

SEC. 747. Each county organized for judicial purposes, shall, at its own expense, provide a suitable court-house and a sufficient jail, and other necessary county buildings, and keep them in repair.

Suits.

SEC. 748. In all suits or proceedings by or against a county, the name in which the county shall sue or be sued shall be, the board of commissioners of the county of ——— (the name of the county), but this provision shall not prevent county officers, when authorized by law, from suing in their name of office, for the benefit of the county.

Service of process

SEC. 749. In all legal proceedings against the county process shall be served on the clerk of the board of county commissioners; and whenever such suit or proceedings shall be commenced, it shall be the duty of the clerk forthwith to notify the county attorney thereof, and to lay before the board of county commissioners, at their next meeting, all the information he may have in regard to such suit or proceeding.

Witnesses and jurors

SEC. 750. On the trial of any suit in which the county may be interested, the inhabitants of such county shall be competent witnesses and jurors, if otherwise competent and qualified according to law.

Payment of judgment.

SEC. 751. When a judgment shall be rendered against the board of county commissioners of any county, or against any county officer, in an action prosecuted by or against him in his name of office, when the same shall be paid by the county, no execution shall issue upon said judgment; but the same shall be levied and paid by tax or other county charges; and when so collected shall be paid by the county treasurer to the proper person to whom the same shall be adjudged, upon the delivery of a proper voucher therefor: *Provided*, That execution may issue on said judgment if payment be not made within sixty days after the time required for the payment of county taxes to the county treasurer, by the proper officers of said county in each year.

12th ses p 38.

Number and term of commissioners.

SEC. 752. The board of county commissioners of each of the several counties of this territory shall consist of three qualified electors, any two of whom shall be competent to exercise the powers conferred upon the board of county commissioners of their respective counties, who shall be elected according to law, and shall hold office for the term of four years, and until their successors are elected and qualified.

12th ses. p. 38

Election of commissioners

SEC. 753. There shall be elected in each of said counties at the general election to be held in the year 1882, one county commissioner; at the general election to be held on every fourth year thereafter, two county commissioners; at the general election to be held in the year 1884, and on every fourth year thereafter, one county commissioner, who shall hold office as provided in the preceding section. The persons now holding the office of county commissioner in said counties shall proceed with the discharge of the duties of the said offices, and shall hold the same until the close of the terms for which they have been elected or appointed.

NOTE —Sections 752 and 753, act of February 19, 1881.

Oath of commissioners

SEC. 754. Each person elected as such commissioner shall, on receiving a certificate of his election, take an oath to support the constitution of the United States and the organic act of this territory, and to perform the duties of his office to the best of his ability, which oath being endorsed upon said certificate, under the hand and seal of the person administering it, shall be sufficient for said person to act as said commissioner.

13th ses p. 34

Compensation

SEC. 755. Each member of the board of county commissioners shall be paid by the county twenty cents per mile for the distance necessarily traveled in going to and returning from the county seat, and eight dollars per day out of the contingent fund of the several counties, for each day while in actual session, and no other compensation shall be allowed.

13th ses. p 63

Powers of commissioners

SEC. 756. The board of county commissioners of each county shall have power at any meeting, except as provided in the second sub-division of this section:

First. To make such orders concerning the property belonging to the county as they may deem expedient.

Second. That only at the regular meetings in March, June, September and December, they shall examine and settle all accounts of the receipts and expenses of the county, and examine, settle and allow all accounts chargable against the county, and when so settled they may issue county orders therefor as provided by law.

Third. To build and keep in repair county buildings, and cause the same to be insured in the name of the county treasurer for the benefit of the county, and in case there be no county buildings to provide suitable rooms for county purposes.

Fourth. To apportion and order the levying of taxes as provided by law, and to borrow money upon the credit of the county, a sum sufficient for the erection of county buildings, or to meet the current expenses of the county in case of a deficit in the county revenue.

Fifth. To represent the county, and have the care of county property, and the management of the business and concerns of the county in all cases where no other provision is made by law.

Sixth. To set off, organize and change the boundaries of townships in their respective counties, designate and give names to them, and to fix the time and place of holding the first election therein.

Seventh. To establish one or more election precincts in any township, as the convenience of the inhabitants may require.

Eighth. To lay out, alter or discontinue any road running through one or more townships in the county, and to perform such other duties respecting roads as may be required by law.

Ninth. To grant licenses for keeping ferries in their respective counties. and such other licenses as may be prescribed by law.

Tenth. To set aside a sum not less than one nor more than twenty-five per cent. of the county fund, annually, which shall be known as the "contingent fund," to defray incidental expenses of the county; and if a surplus of such contingent fund, so set aside, remain, it shall be paid out on registered warrants as other county funds are, at the expiration of each quarterly settlement.

Eleventh. To perform such other duties as are, or may be, prescribed by law.

NOTE —Section 756 act of March 1, 1883

New townships

SEC. 757. The board of county commissioners shall not set off or organize any new township unless a petition be first presented to the board, signed by at least fifty citizens resident therein.

Change of township organization

SEC. 758. The board of county commissioners shall alter and change the township organization of their county, so as to agree with the standard fixed in the preceding sections in respect to the territory and population, if such change be desired by the citizens of the county, on a petition of a majority of the legal voters being presented to the board of county commissioners.

Seal

SEC. 759. Every board of county commissioners shall have a seal, or scroll until a seal can be procured and may alter the same at pleasure. They shall sit with open doors and all persons conducting themselves in an orderly manner may attend their meetings: and they may establish rules and regulations to govern the transaction of their business.

Chairman.

SEC. 760. They shall, at the first meeting after their election, and after every annual election, choose one of their number chairman, who shall preside at such meeting, and all other meetings during the year, if present; but in case of his absence from any such meeting, the members present shall choose one of their number as temporary chairman.

Chairman may administer oaths.

SEC. 761. The chairman of said board shall have power to administer oaths to any person concerning any matter submitted to the board or connected with their powers and duties, and he shall sign all county orders.

Proof of accounts.

SEC. 762. No account shall be allowed by the board of county commissioners unless the same be made out in separate items, and the nature of each item stated; nor unless the same be verified by affidavit, showing that the said account is just and wholly unpaid; and if the same be for official services for which no specified fees are fixed by law, the time actually and necessarily devoted to such service shall be stated; but nothing in this section shall prevent such board from disallowing any account in whole or in part, when so rendered and certified.

NOTE —Act February 13, 1874

County orders.

SEC. 763. County orders shall be signed by the chairman and attested by the clerk, and shall specify the nature of the claim or service for which they were issued.

NOTE.—Act of January 12th, 1872

Appeal.

SEC. 764. Whenever a claim of any person against a county shall be disallowed, in whole or in part, or when any tax-payer of the county shall feel aggrieved by any allowance made by the board as excessive, unjust to the county, or illegal, such person may appeal from the decision of such board to the district court, for the county, by causing a written notice of such appeal to be served on the clerk of such board, within thirty days after the making of such decision or allowance, and executing a bond to such county, with surety to be approved by the clerk of such board, conditioned to prosecute such appeal to effect, and to pay all costs that shall be adjudged against the appellant.

NOTE —Act February 13th, 1874

Duty of clerk in case of appeal

SEC. 765. The clerk of the board, upon such an appeal being taken, shall immediately give notice thereof to the county attorney, and shall make out a brief return of the proceedings in the case before the board, with their decision thereon, and shall file the same, together with the bond and all the papers in the case, in his possession, with the clerk of the district court; and such appeal shall be entered, tried and determined, the same as appeals from justices' courts, and costs shall be awarded in like manner.

Assessment roll to assessor.

SEC. 766. The board of commissioners of their respective counties, shall, at the expense of the county, furnish annually and in due season to the assessor of the county, suitable blank assessment rolls for the several townships, prepared in accordance with the provisions of the law, and shall also provide suitable books and stationery for the use of the county officers of their county, together with appropriate cases and furniture for the safe and convenient keeping of all the books, documents, and papers belonging to each of said officers, and also official seals for each of said officers, when the same are required by law.

Examination and cancellation of warrants

SEC. 767. The board of county commissioners at their annual march session, or oftener if they deem it necessary, shall carefully examine the county orders returned by the county treasurer, by comparing each order with the record of orders in the clerk's office. They shall cause to be entered on said record, opposite to the entry of each order issued, the date when the same was cancelled; they shall also make a list of the orders so cancelled, specifying the number, date, amount, and the person to whom the same was payable, and enter the same on the journal of the board. They shall also cause to be cancelled all county orders that have remained one year or more uncalled for in the county clerk's office, the same to be cancelled in the same manner as other county orders. Also, at the same time, the county treasurer shall deliver over to the board of county commissioners, all warrants or vouchers that he may have in his possession, for moneys disbursed by him as such treasurer, and the county commissioners shall receipt for the same, and make out and sign a list thereof, specifying the number, date, and amount of warrant or voucher, to whom payable, and where paid or cancelled, and the county clerk shall record the same in the journal of the board.

NOTE.—Act February 13th, 1874

Penalty for failure of duty.

SEC. 768. If any commissioner shall refuse or neglect to perform any of the duties which are or shall be required of him by law as a member of the board of county commissioners, without just cause therefor, he shall, for each offence, forfeit a sum not less than twenty-five dollars, nor more than one hundred dollars.

Township plats.

SEC. 769. Whenever any board of commissioners shall organize new townships, or alter the boundaries of any townships in their county, they shall cause a plat and record thereof to be be made by their clerk, specifying the name and boundaries of such township, which plat and record shall be kept in the office of said clerk, and a copy thereof, under the seal of said board, shall be made by said clerk and filed with the proper officer of said township.

Duties of clerk.

SEC. 770. It shall be the general duty of the clerk of the board of commissioners:

First. To record, in a book to be provided for that purpose, all proceedings of the board.

Second. To make regular entries of all their resolutions and decisions, in all questions concerning the raising of money.

Third. To record the vote of each commissioner on any question submitted to the board, if required by any member.

Fourth. Sign all orders issued by the board for the payment of money, and to record, in a book to be provided for that purpose, the receipts and expenditures of the county treasurer of the county.

Fifth. To preserve and file all accounts acted upon by the board, with their action thereon; and he shall perform such special duties as are required by law.

Same.

SEC. 771. It shall be the duty of such clerk to designate, upon every account which shall be audited and allowed by the board, the amount so allowed; and he shall also deliver to any person who may demand it a certified copy of any record in his office, or any account on file therein, on receiving from such person twenty-five cents for every folio contained in such copy.

Same

SEC. 772. Such clerk shall not sign or issue any county orders unless ordered by the board of commissioners authorizing the same; and every such order shall be numbered, and the date, amount, and number of the same, and the name of the person to whom it is issued, shall be entered in a book to be kept by him in his office for that purpose.

Same

SEC. 773. The said clerk of each county shall, as often as a new township shall be organized in his county, or the boundaries of any township therein shall be altered, and immediately thereafter, make out and transmit to the secretary of the territory a certified statement of the names and boundaries so organized, and the boundaries of any township, the boundaries of which shall have been altered.

Compensation of clerk.

SEC. 774. Such clerk shall receive a reasonable compensation for such service as he may perform as clerk of the board; when no specified fees are allowed therefor, the same to be allowed by the board and paid by the county.

NOTE.—The preceding sections of this article, except where otherwise specially noted, are from the act of January 12th, 1872

Transfer of funds

SEC. 775. The county commissioners of the several counties are hereby authorized to transfer all surplus moneys that may be on hand in any of the several county funds, except the school fund, to such fund or funds as they may deem for the best interest of their respective counties, or to appropriate said surplus moneys to the payment of the outstanding indebtedness of their respective counties; *Provided*, That no moneys belonging to the school fund shall be taken therefrom, except for school purposes.

NOTE.—Act of January 24th, 1876.

Bond of commissioners

SEC. 776. Each person elected to the office of county commissioner of any county in this territory shall, before he enter upon the duties of his office, execute and file with the probate judge of the county, a bond with two or more sufficient sureties, in the penal sum of not less than three thousand dollars, to be fixed and approved by the judge of the probate court, conditioned for the faithful discharge of his duties as such commissioner; and all persons now holding the office of county commissioner in any of the several counties in this territory, shall, on or before the regular meetings of their respective boards, in December, A. D. 1872, execute and file the bond as above required; and any person so holding the said office of county commissioner, who shall fail, refuse, or neglect to file his bond as above required, shall forfeit his right to said office. And the probate judge of the county in which any person holding the office as aforesaid, who fails or refuses to file the bond, as herein required, shall declare said office vacant, and shall proceed to fill such vacancy by the appointment of some suitable person to fill the same. Any person so appointed to fill such vacancy, shall proceed forthwith to execute and file his bond as herein required, and shall enter upon and discharge the duties of said office, and shall hold the same until his successor is duly elected and qualified.

Duty of probate judge if bond not given.

Duties of commissioners

SEC. 777. It shall be the duty of the county commissioners (in addition to the duties herein prescribed by law) to audit, adjust, and settle all accounts to which the county shall be a party; to order the payment, out of the county treasury, of any sum of money found to be due by the county; to enforce the collection of all moneys due the county; to order suit to be brought on the bond of any delinquent, and require the district and county attorney for the county to commence and prosecute the same; to issue all necessary process to secure the attendance of any person, whether party or witness, whom they may deem necessary to examine, in the investigation of any account or claim against the county; and if any such person, being served with such summons, shall not appear, according to the command thereof, the said board of county commissioners may compel his appearance by attachment; and, in order to procure the exhibition or delivery to them of any accounts, books, documents or other papers the said board of county commissioners may issue a summons directed to the person in whose custody or care the said accounts, books, documents or other papers may be, commanding him to deliver or transmit the same to the said board of county commissioners, which summons shall be served by the sheriff; and if the person named in such summons refuse to appear with, or transmit the accounts, books, documents, or other papers, or show good cause why he does not, at the time appointed for his appearance, the said board of county commissioners may enforce the delivery thereof by attachment; and the said board of county commissioners may examine all parties and witnesses, on oath, touching the investigation of any accounts, and may commit to jail any who shall refuse to answer any lawful question.

NOTE —Section 776 and 777 from act of January 9, 1872.

Annual financial statement

SEC. 778. It shall be the duty of the county clerk of each county in the territory to make out and present to the county commissioners of their respective counties, at the regular spring term in each year, a full and complete statement of the financial condition of their respective counties for the fiscal year preceding March 1, which statement shall show:

First. The amount of moneys, if any, on hand, as shown by the statement of the previous year.

Second. The amount of moneys received by the treasurer for taxes upon real and personal property.

Third. The amount of moneys received by him for fines, penalties and forfeitures.

Fourth. The amount of moneys received by him for licenses.

Fifth. The amount of moneys received from all other sources.

Sixth. Said statement shall also show the amount of moneys paid out during the last year from the different funds of the counties. The totals of the several amounts of moneys paid out shall be deducted from the sums of moneys on hand at the beginning of the previous year, and moneys received during said year by the county treasurer, and a balance shall be struck.

Seventh. Said statement shall also show the assessed valuation of all real and personal property for that year, the rate of taxation, the assessed valuation of real and personal property on which taxes have not been paid, the total delinquent taxes for that year and for each preceding year.

Statement to be published.

SEC. 779. The facts thus ascertained and the statements thus made out, shall be made out in duplicate, one copy of which shall be filed in the office of the county treasurer and one copy sent to the territorial auditor. Said statement shall also be recorded in full in the journal of the proceedings of the board of county commissioners, and shall be published for one week in the newspaper which has contracted to do the public printing in said county, said publishing to be done at not to exceed contract rates.

If no newspaper the statement to be posted.

SEC. 780. If there is no paper published in the county, or if the papers published therein refuse for any reason to publish the statements and lists provided for in preceding sections of this act, the board of county commissioners may, in its discretion, have said statements and lists published in some paper in an adjoining county, at rates not exceeding the rates specified in the preceding sections, or may direct the county clerk to prepare and post copies of such statements and lists in three public places in the county.

NOTE—Sections 778, 779 and 780 are sections 4, 5 and 6 of "An act requiring the publication of certain matters," approved March 10, 1887. Said act appears in full in sections 1647 to 1656, both inclusive of this division

Sinking fund.

SEC. 781. The county commissioners of the different counties of this territory may set apart, from the county part of the revenue of their respective counties, a certain sum, annually, for the payment of the outstanding county bonds and the interest thereon *Provided*, That the sum so set apart shall not exceed seven mills of the number of mills levied for county tax. Said fund shall be known as the sinking fund to pay said bonds and interest, and which bonds shall be paid in the order in which they were issued, and whenever a sufficient sum shall have accumulated in said sinking fund to pay any bond, over and above the sum required to pay the annual interest on the outstanding bonds, it shall be the duty of the treasurer to post upon the door of his office a notice, that there is money in his hands to pay such bonds, designating it by the number, date, amount, and the name of the payee, and from the date of such notice the interest of such bond or bonds shall cease, and it shall be the duty of the treasurer to file a true copy of such notice in the office of the clerk in his county, and the clerk shall file and preserve the same in his office, which notice, or a duly authenticated copy thereof, shall be *prima facie* evidence of such filing.

NOTE.---Act February 5th, 1876

Contingent fund.

SEC. 782. The county commissioners of each county in the territory are hereby authorized to annually set apart a sum, not exceeding three mills of the number of mills levied for county tax, which shall be known as the contingent fund, and shall be used to defray the incidental expenses of the county.

Surplus of contingent fund.

SEC. 783. If a surplus of the contingent fund, set apart in section 782, remain on hand at the end of the year, said surplus shall be paid out on registered county warrants in the same manner as other county funds.

No warrant to be issued for balance of warrant.

SEC. 784. All county clerks are hereby expressly forbidden to issue any county warrant to any person for any balance due such person on any county warrant paid to the treasurer for taxes.

NOTE —Sections 782, 783 and 784 act of January 12, 1872.

Meetings of board.

SEC. 785. The boards of county commissioners of the several counties of this territory, except herein otherwise provided, shall meet at the county seat of their respective counties, on the first Monday in the months of December, March, June, and September, of each year, and may sit not exceeding five days at each term, except the December term, at which they may sit not exceeding eight days; but said boards may at any time, by giving at least five days public notice, call an extra session of not over two days duration: *Provided*, *however*, That in those counties where the assessed valuation, as ascertained by the last annual assessment, shall exceed the sum of six million dollars, the board of commissioners of any such county may sit not exceeding ten days at each of said terms.

NOTE 1.—Section 785 is as amended by "An act to amend section 380 of the fifth division of the Revised Statutes of Montana," approved March 9, 1887, and comprises all of said act except the introductory clause thereof, as follows "Section 1 That section 380 of the fifth division of the Revised Statutes of Montana be amended so as to read as follows."

NOTE 2.—See also chapter XL.

CHAPTER XL.

COUNTY FINANCES, BONDS AND WARRANTS.

Sec. 786. County commissioners may bond indebtedness.
Sec. 787. May set apart revenue to pay bonds.
Sec. 788. Size of bonds.
Sec. 789. Duty of treasurer in taking up warrants.
Sec. 790. When bonds redeemable.
Sec. 791. County treasurers to enter county warrants presented for payment.
Sec. 792. Treasurers—when to pay over to territory—to take duplicate receipts.
Sec. 793. County treasurer to post on door of office list of warrants.
Sec. 794. County warrants presented to treasurer for payment—rate of interest.
Sec. 795. On what conditions to borrow money.
Sec. 796. Notice of loan to be posted.
Sec. 797. How and when vote on loan taken.
Sec. 798. Bonds may be purchased before maturity.
Sec. 799. Order in which to be purchased.
Sec. 800. Transfer of county funds.
Sec. 801. Re-transfer of money to *the sinking fund.*
Sec. 802. Duplicate bonds, warrants or coupons may be issued under certain circumstances.
Sec. 803. Security bond required.
Sec. 804. How duplicate marked.
Sec. 805. Mark imparts notice.
Sec. 806. Holder of original protected in his rights.

Sec. 807. Duty of county commissioners to issue duplicate upon proof of loss of original.
Sec. 808. County commissioners may issue bonds to redeem county indebtedness.
Sec. 809. How bonds and coupons signed.
Sec. 810. Notice of sale.
Sec. 811. How proceeds of sales applied.
Sec. 812. How redeemed bonds cancelled.
Sec. 813. Faith of county pledged for the payment.
Sec. 814. Blank bonds to be lithographed.
Sec. 815. Notice when prepared to pay bonds.
Sec. 816. Moneys to be set aside to pay interest.
Sec. 817. Interest to be paid when due.
Sec. 818. Penalty for forging, etc., the bonds.

Commissioners may issue bonds.

Sec. 786. That the county commissioners of the different counties of this territory shall have, in addition to the powers already conferred by law, authority to call in, at any time when they shall deem it expedient for the interest of their respective counties, all outstanding orders against the treasury of the county, and may issue bonds, with interest-bearing coupons, payable semi-annually, in lieu thereof.

Sinking fund.

Sec. 787. The county commissioners of the different counties may set apart from the ordinary revenue of their respective counties, for the payment of outstanding bonds and the interest thereon, a certain amount annually: *Provided*, That the sum annually set aside shall not exceed one-fourth of the outstanding bonds, exclusive of interest: *And provided, also*, That the amount so set aside shall not at any time exceed one-fifth of the revenue of the county.

Denomination of bonds.

Sec. 788. All bonds issued under the provisions of this article shall be for sums not less than fifty dollars. They shall be signed, countersigned and issued in the same manner provided for the issuing of county warrants.

Record and cancellation of orders.

Sec. 789. It shall be the duty of the county treasurer, upon taking up county orders for the purposes in this article mentioned, to keep a record of the same, to cancel said orders and to make a report thereof to the board of commissioners at each regular meeting of said board.

Bonds, when redeemable.

Sec. 790. The bonds authorized to be issued by this article shall be redeemable at the pleasure of the county any time after three years, and payable within seven years from the date of their issue.

Register of presented warrants

SEC. 791. It shall be the duty of the several county treasurers within the territory to keep a book in which they shall enter all county warrants of their proper county presented for payment, in the order in which they are presented, giving the name of the owner, the number and amount of the warrants; and they shall be paid in the order in which they are presented.

Payments to territorial treasurer.

SEC. 792. The treasurers of the several counties of this territory shall pay over to the territorial treasurer every three months all moneys that they have in their hands belonging to the territory.

Receipts

SEC. 793. The county treasurer at the time of paying over any money to the territorial treasurer, shall take from him duplicate receipts therefor, one of which he shall deposit with the territorial auditor, and retain the other as his voucher on settlement. The county treasurers of the several counties of this territory shall, on the first Monday of every month, post upon the door of their offices a list of all warrants that they have funds in their hands to redeem or pay, the payment for which has not been demanded during the month last passed, and, from the date of such notice, the interest on all warrants thus posted shall cease; and it shall be the duty of such treasurer to file a true copy of said notice in the office of the county clerk of his county, which clerk shall file and preserve the same in his office, which notice, or a duly authenticated copy thereof, shall be *prima facie* evidence of such posting: *Provided, however*, That in all cases where county warrants have been posted or advertised, as in this section directed, and not presented for payment within two months from the date of such notice, shall be passed over, and the money in the treasury be paid upon the next warrants in turn according to their number and registration as the law directs, but such warrants, so passed, shall at any time thereafter take preference for payment upon presentation to such treasurer.

List of warrants ready for redemption.

12th ses p 84.

Interest

SEC. 794. All county warrants that may be drawn after the first day of March, A. D. 1881, by the proper authorities of any county, after having been presented to the county treasurer of the respective counties of this territory, and by them endorsed, "Not paid for want of funds in the treasury," from and after said date of presentation and endorsement, shall draw interest at the rate of seven per centum per annum: *Provided*, That the provisions of this section shall not apply to the county of Missoula, in this territory.

NOTE—Section 794 act of February 7, 1881.

Submission to vote

SEC. 795. The board of county commissioners shall not borrow money for the purpose specified in the fourth sub-division of section 756, chapter XXXIX, without having first submitted the question of such loan to a vote of the electors of the county.

Notice of election.

SEC. 796. Whenever it shall become necessary, under provisions of section 795, to submit to a vote of the electors of any county the question of raising any sum of money by a loan, the said board, after having determined the sum necessary to be raised, shall cause notice of such determination, and of the time when the question will be submitted to the electors of the county, by written or printed hand-bills, posted up in five of the most public places in each township, for, at least thirty days previous to the time fixed for taking such vote.

Election.

SEC. 797. At the time specified in such notice, a vote of the electors of such county shall be taken at the place designated in the notice. The inspectors receiving the votes shall be the same as required at the general election, and the vote shall be canvassed by the same officers, and in the same manner, as required at such general election, and the result of such vote shall be certified by them, and transmitted to the county clerk, within ten days after such vote shall be taken, which certified statement shall be delivered by said clerk to the board of county commissioners at their next meeting. All voting in the several townships, as provided in this section, shall be by ballot, and those voting in favor of such proposed loan shall have written or printed on their ballots, "*For the loan,*" and those voting against the loan shall have wrtten or printed on their ballots, "*Against the loan,*" and, if a majority of the votes cast at such election shall be "against the loan," it shall not be made.

NOTE.—Sections 795, 796 and 797 Act of February 13th, 1874

12th ses. p. 41.

Purchase of bonds by treasurer.

SEC. 798. It shall be the duty of the county treasurer of any county in this territory, at any time before the coupon bonds of the county shall become redeemable at the pleasure of such county, and when there is a sum exceeding five hundred dollars in any sinking fund constituted under authority of law for the redemption of said bonds, over and above the accrued interest on such bonds still outstanding, and from time to time thereafter when it shall so occur, to cause a notice to be published in a newspaper of this territory, that he will, within thirty days from the date of such notice, purchase said amount of said bonds in the order in which the same shall be offered for sale; such notice shall also be sent by mail to the owners or holders of such bonds, if the county treasurer has notice or knowledge of the address of such owners or holders; and if, at the expiration of the said thirty days, the owners or holders shall fail to offer for sale any of said bonds, or if the amount of said bonds so offered for sale shall be less than the sum of money in said sinking fund, it shall be the duty of the county treasurer to transfer the surplus moneys in said sinking fund to the general and warrant fund.

12th ses p 41.

Same.

SEC. 799. It shall be the duty of the county treasurer of such county to apply said moneys in said sinking fund to the purchase of the said bonds which shall be offered for sale by the owners or holders thereof, within the times mentioned in the notice prescribed in the preceding section, and pay therefor the amount of the principal and interest thereof. If the moneys in said sinking fund shall be insufficient to pay for all of said bonds which shall be so offered for sale, it shall be the duty of the county treasurer to use said moneys in buying the said bonds in the order in which they shall have been offered for sale; and the moneys which shall thereafter accumulate in said sinking fund shall be applied to the purchase of the remainder of said bonds, unless the owners or holders shall withdraw their offer to sell the same.

12th ses. p 42.

Transfer of funds

SEC. 800. It shall be the duty of the board of county commissioners of every county in this territory to transfer to the several funds thereof all moneys which have been, or may be received by the treasurer thereof in partial payment of any license or tax.

12th ses. p 42.

Redemption of bonds.

SEC. 801. When such coupon bonds shall become redeemable at the pleasure of the county, it shall be the duty of the county treasurer to transfer to said sinking fund, from the general or warrant fund, the moneys that shall have been transferred from said sinking fund to the general or warrant fund under the provisions of section 798.

NOTE.—Sections 798 to 801, inclusive, Act of February 22, 1881.

12th ses. p. 83.

Duplicate of lost bond

SEC. 802. The boards of county commissioners of their respective counties in the Territory of Montana, are hereby authorized and empowered, upon satisfactory proof to them that any original bond, warrant or coupon of their respective counties has been lost or destroyed, to issue to the owner or holder of such bond, warrant or coupon, a duplicate thereof, which shall take the place in order of registration and payment of such original bond, warrant or coupon, and shall in all cases supercede and take the place of such original.

12th ses. p. 83.

Person receiving duplicate to give bond.

SEC. 803. Before issuing such duplicate bond, warrant or coupon, the county commissioners shall require the person or persons demanding the same to execute and deliver to the treasurer of the county a bond, payable to whomsoever it may concern, in double the amount of the bond, warrant or coupon, with at least two good and sufficient sureties, who shall be required to justify as in case of attachment, the conditions of such bond being that the principal and sureties therein will indemnify and save harmless the county from all loss, cost or damages by reason of the issuing of such duplicate, and will pay to any person entitled to receive the same, as the lawful holder of the original bond, warrant or coupon, all moneys received upon such duplicate.

"Duplicate" to be written across face of bond

SEC. 804. The chairman of the board of county commissioners, at the time of issuing any duplicate bond, warrant, or coupon, shall write across or upon the face thereof the word "Duplicate," in red ink, in a conspicuous and legible manner.

12th ses. p 83. Effect of the word "duplicate."

SEC. 805. The word "duplicate" upon any bond, warrant or coupon, as provided in section 804, shall impart notice to all persons that the same is issued subject to the provisions of this act.

12th ses. p 83.

Endorsement of original bond

SEC. 806. It shall be the duty of any county treasurer, upon the production to him of any original bond, warrant or coupon, by the lawful owner or holder thereof, to assign by endorsement, and to deliver to him, the bond mentioned in section 803, and such owner or holder may maintain an action in his own name upon such bond for the recovery of any moneys paid upon such duplicate; but the delivery of said bond shall not relieve or exonerate the county from the payment of the amount specified therein, upon a demand and refusal of the sureties named in the indemnifying bond to pay the same.

12th ses. p. 84.

Duplicate for bond heretofore lost.

SEC. 807. In case any county bond, warrant or coupon, issued prior to the passage of this act, shall be lost or destroyed, it shall be the duty of the county commissioners of their respective counties, upon satisfactory proof thereof, and the execution and delivery of a bond, in the manner and conditions as provided in section 803, to issue a duplicate thereof, which duplicate shall take the place, in order of registration and payment, of such lost or destroyed bond, warrant or coupon, and the provisions of this act shall apply thereto.

NOTE —Sections 802 to 807, inclusive, Act of Feb 4th, 1881.

13th ses p 92

Bonds: amount, time, etc

SEC. 808. The county commissioners of each county of this territory shall have, and are hereby given, in addition to the powers already conferred on them by law, authority to issue on the credit of their respective county, coupon bonds to an amount sufficient to enable them to redeem all legal outstanding bonds, warrants, or orders, not exceeding in the aggregate, including outstanding bonded indebtedness, four per centum on the value of the taxable property within such county, to be ascertained by the last assessment for the territorial and county taxes, previous to issuing such bonds. The issue of such bonds may be made at any time such county commissioners shall deem it expedient for the interest of their respective county. Said bonds shall be redeemable and payable at such times, not longer than twenty years, after the date thereof, as the county commissioner of the county issuing the same shall determine, and the interest which such bonds shall bear shall be fixed by such county commissioners, not exceeding seven per centum per annum, and be represented by interest coupons, payable semi-annually, on the first day of January and July of each year.

NOTE —See note to section 816

Denomination, signing and register of bonds

SEC. 809. The commissioners shall fix the denomination of each bond issued under this act, and prescribe the form thereof; and each bond, and all coupons attached thereto, shall be signed by the chairman of the board of county commissioners and the treasurer of such county; and each bond shall also be sealed and countersigned by the clerk of such county, and each coupon shall be signed by the said clerk. Each bond issued shall be registered by the said county treasurer in a book provided for that purpose, which shall show the number and amount of each bond, and when and to whom issued.

Sale.

SEC. 810. When the county commissioners of any county shall issue any bonds authorized by this act, it shall be their duty to sell the same, and give notice by advertisement in some newspaper published in the county, or if there be no newspaper published in such county, then in any newspaper published in an adjoining county of this territory, and also in one or more newspapers published in the city of New York, state of New York, for a period of not less than thirty days prior to the time said bonds are to be sold; such advertisement shall be for sealed proposals, which shall state the amount of such bonds for sale, and the party or parties offering the highest price therefor shall be entitled to recive the amount of such bonds which he or they may offer to buy; but no bonds shall be sold for any price less than the par value thereof.

Proceeds of bonds, and exchange thereof.

SEC. 811. The proceeds derived from the sale of bonds authorized to be issued by this act, shall be paid into the county treasury of such county, and shall be applied to the payment of the legal bonds, warrants, or orders, of such county, which may be outstanding or unpaid, in the order in which said bonds, warrants, or orders, become due: *Provided*, That the board of county commissioners of such county may, at any regular meeting thereof, exchange such bonds, issued under the provisions of this act, for any outstanding county bonds then due, and for any legal county warrants or orders of such county issued prior to a day to be fixed by such county commissioners and entered of record in the journal of their proceedings, such exchange, when made, shall be dollar for dollar, with accrued interest thereon. And such county commissioners may advertise the privilege to so exchange bonds then due, and warrants and orders of such county, issued prior to the day so fixed as aforesaid, in some nowspaper printed and published in such county, or if there be no newspaper published in such county, then in a newspaper published in an adjoining county of this territory, for such period as the county commissioners may deem expedient.

NOTE ---See note to section 816

Order of payment.

SEC. 812. All bonds, coupons, warrants, or orders, which shall be called in or redeemed, or paid, under the provisions of this act, and in lieu of which coupon bonds shall be issued, shall be cancelled in the same manner in which county warrants are then cancelled, and the county commissioners shall preserve, in a book provided for that purpose, a correct description of such bonds, coupons, warrants, or orders, so cancelled, and the amount of the principal and interest paid to redeem the same.

Public faith pledged.

SEC. 813. The faith of each county in this territoy is solemnly pledged for the payment of the interest and the redemption of the principal of every bond which shall be issued under the provisions of this chapter.

Bonds to be printed or lithographed.

SEC. 814. The county commissioners of each county in this territory shall cause suitable bonds, with coupons attached, to be printed or lithographed, when the same shall be necessary, and shall pay therefor out of any moneys in the treasury of such county not otherwise appropriated.

Payment of bonds

SEC. 815. When the county commissioners of any county in this territory shall be prepared, under tho provisions of this act, to redeem or pay any legal outstanding indebtedness of such county, they shall cause a notice to be published in the newspapers mentioned in section three of this act, that they will, within thirty days from the date of such notice, redeem or pay such indebtedness, briefly describing the same; such notice shall also be sent by mail to the owner or holder of such indebtedness, in case the said commissioners have notice or knowledge of the address of such owner or holder; and if, at the expiration of the said thirty days, the holder or holders shall fail or neglect to present the same for payment interest thereon shall cease; but the treasurer of such county shall at all times thereafter be ready to redeem the same on presentation.

SEC. 816. The board of county commissioners of such county issuing bonds under the provisions of this act shall annually, at the time of levying taxes, levy upon the taxable property of such county, in addition to all other taxes, a sum sufficient to pay the interest on all the bonds issued under the provisions of this act, as the same becomes due, and also a sum sufficient to provide for the redemption of such bonds as the same shall become due, or shall be called in for payment, according to the condition thereof, and such tax when collected shall be set apart in a fund known as the "bond fund," and used for no other purpose than the payment of such bonds and interest accruing thereon. Provided that the levy of a tax sufficient to pay the interest on any bonds issued under this act in the year 1887, may be levied at the regular March meeting of the board of county commissioners in that year.

NOTE—Sections 808, 811 and 816 are respectively sections 1, 2 and 3 of "An act to amend an act entitled, 'An act to authorize county commissioners to issue bonds to redeem outstanding indebtedness,' approved March 6, 1883," approved March 5, 1887, and comprise all of said act except the introductory clauses to said sections 1, 2 and 3, the introductory clause to said section 1 being as follows: "Section 1 That section one (1) of an act entitled, "An act to authorize county commissioners to issue bonds to redeem outstanding indebtedness,' approved March 6, 1883, be and the same is hereby amended so as to read as follows", the introductory clause to said section 2 being as follows. "Section 2 That section four (4) of said act be and the same is hereby amended so as to read as follows", and the introductory clause to said section 3 being as follows. "Section 3 That section nine (9) of said act be and the same is hereby amended so as to read as follows".

Payment of interest.

SEC. 817. The county treasurer of each county of this territory shall pay the interest upon the bonds authorized to be issued under the provisions of this chapter when the same becomes due, on the presentation to him of the proper coupons therefor; and all bonds and coupons which may be paid by such county treasurer, shall be returned by the treasurer to the board of county commissioner at his next settlement after such payment; and the said commissioners shall cancel said bonds and coupons in the manner provided by law for the cancellation of county warrants.

Penalty for counterfeiting, etc., bond.

SEC. 818. Any person or persons who shall falsely make, forge, counterfeit or alter, or cause or procure to be falsely made, forged, counterfeited or altered, or shall wilfully aid or assist in makig, forging, counterfeiting or altering, any bond or coupon authorized to be issued under the provisions of this act, or shall pass, utter, publish or sell, or attempt to pass, utter, publish or sell, or shall have or keep in possession, or conceal with the intent to utter, publish or sell, any such forged, counterfeited or altered bond or coupon, with intent to defraud any corporation, or person or persons, shall be deemed guilty of felony, and shall upon conviction thereof, be punished by imprisonment in the territorial penitentiary for a term of not less than one year nor more than fourteen years.

NOTE.—Section 808 to 818 inclusive, act of March 6, 1883, except where otherwise specially noted

CHAPTER XLI.

PROBATE JUDGE.

Sec. 819. Probate judge in each county hold office two years, execute bond, etc.

Sec. 820. Probate judge to keep records; records to be kept open.

Term of office; bond.

SEC. 819. There shall be elected in each county a probate judge, who shall hold his office for two years, and who shall, before he enter upon the duties of his office, execute to the Territory of Montana a bond in the penal sum of five thousand dollars, with two or more sufficient sureties, to be approved by the county treasurer, and filed in his office, conditioned for the faithful performance of the duties required of him by law and for the faithful application and payment of all moneys and effects that may come into his hands in the execution of the duties of his office.

SEC. 820. The probate judge shall keep a record of all probate business done by or before him, which record shall be open to the inspection of all persons without charge, and he shall receive such fees as are by law allowed him for probate business. Record and fees

CHAPTER XLII.

PUBLIC ADMINISTRATOR.

Sec. 821. When elected—term of office.
Sec. 822. Duties and fees.
Sec. 823. Oath and bond.
Sec. 824. Additional bonds may be required.
Sec. 825. When office to become vacant.
Sec. 826. Any person injured may sue for breach of bond.
Sec. 827. How and when removed from office.
Sec. 828. May be indicted for misdemeanor in office and penalty therefor.

SEC. 821. At the next general election to be held in the Territory of Montana, and every two years thereafter, there shall be elected in each county in the Territory one public administrator, whose term of office shall begin on the third Monday of December following, and who shall hold his office for two years, and until his successor is elected and qualified. 13th ses p 36. Election and term of office.

SEC. 822. The duties and fees of public administrators to be elected under this chapter shall be the same as those now prescribed by law for public administrators. Duties.

SEC. 823. Before entering upon the duties of his office, the public administrator shall take and subscribe the oath now prescribed by law for other county officers, and shall execute a bond to the Territory of Montana in the sum of ten thousand dollars, with two or more sufficient sureties to be approved by the probate judge of the county, and conditioned for the faithful performance of the duties of his office, and which bond shall be filed and recorded in the office of the county clerk and recorder. Bond and oath

SEC. 824. That it shall be the duty of the probate judge to require of the public administrator, from time to time, such additional bonds as may be necessary to secure the interests of estates in the hands of public administrators: *Provided*, The bonds so required shall not exceed in amount the bonds required by law to be given by administrators. The bonds to be given under this section shall be approved, filed, and recorded as provided in section 823 of this chapter. Additional bonds.

If bonds not given office becomes vacant

Sec. 825. Upon failure of any public administrator to give the bond as required in this act, or as may be required by the probate judge, his office shall become vacant, and upon vacancy in the office of public administrator, from any cause whatever, the office shall be filled by appointment by the probate judge.

Note ---Sections 821 to 825, inclusive, Act of January 31st, 1883

Who may sue on bond

Sec. 826. Any person injured by the breach of the bond of a public administrator may sue upon the same, in the name of the people of the Territory of Montana, for his own use, in any court having jurisdiction.

Removal.

Sec. 827. Such public administrator may be removed from office in the same manner and for the same causes as administrators in other cases.

Penalty for misdemeanor.

Sec. 828. For any willful misdemeanor in office. he may be indicted, and fined not exceeding one thousand dollars, and may be imprisoned until such fine and costs are paid.

Note ---Sections 826, 827, 828, Act of January 12th, 1872

CHAPTER XLIII.

COUNTY CLERK.

Sec. 829. County clerk to be elected and give bond.

Sec. 830. To be clerk of board of county commissioners and ex-officio county auditor.

Sec. 831. Clerk to appoint deputy.

Sec. 832. Clerk to keep office at county seat; keep record, etc.

Sec. 833. County commissioners to appoint clerk to fill vacancy.

Sec. 834. County clerk ex-officio recorder.

Sec. 835. Recorder to keep index; direct and inverted form of same.

Sec. 836. To note date and hour .document received for record.

Sec. 837. Recorder to keep book of record of town plats.

Sec. 838. To keep index of grantors and grantees.

Sec. 839. Copies of records and files prima facie evidence.

Sec. 840. County clerk authorized to administer oaths, take acknowledgments, etc.

Sec. 841. County clerk to deliver warrants, except to payer, his agent, assignee or legal representative.

Sec. 842. Attachment book to be kept by recorder.

Election, term and bond.

SEC. 829. A county clerk shall be elected in each county of this territory for the term of two years, and he shall, before he enter upon the duties of his office, execute and file with the treasurer of the county, a bond, with two or more sufficient sureties, in the penal sum of not less than five thousand dollars, to be fixed and approved by the treasurer, with conditions, in substance as follows, to-wit:

Whereas, the above bounden............ ..was elected to the office of county clerk of ..... county, on the .... day of ......; now, therefore, if the said .... shall faithfully perform all the duties of his office, and shall pay over all moneys that may come into his hands as such clerk, as required by law, and shall deliver to his successor in office all the books, records, papers and other things belonging to his said office, then the above obligation to be null and void; otherwise to remain in full force.

County auditor.

SEC. 830. The county clerk shall be in and for his county, clerk of the board of commissioners and *ex-officio* county auditor.

Deputy.

SEC. 831. Every such clerk shall appoint a deputy, in writing under his hand, and shall file such appointment in his office, and such deputy, in case of the absence or disability of such clerk, or in case of a vacancy in his office, shall perform all the duties of such clerk, during such absence, or until such vacancy shall be filled. Every such clerk may appoint other deputies, and his sureties shall be responsible under his official undertaking for the acts of such deputies.

Certain duties of clerk.

SEC. 832. The county clerk shall keep his office at the county seat, shall attend the sessions of the board of county commissioners, either in person or by deputy, keep the seals, records and papers of the board of county commissioners, and keep a record of the proceedings of said board, in a book as required by law, under the direction of said board of commissioners.

Vacancy.

SEC. 833. If a vacancy in the office of county clerk shall occur by death, resignation or otherwise, the board of county commissioners shall appoint some suitable person to fill such vacancy until a successor shall be elected according to law.

Recorder.

Sec. 834. The county clerk shall be *ex-officio* recorder of deeds, and shall have custody of and shall safely keep and preserve all the books, records, deeds, maps, papers deposited or kept in his office, and shall also record all deeds, mortgages, maps, instruments and writing authorized by law to be recorded in his office, and left with him for that purpose, and shall perform all other duties required of him by law.

General index.

Sec. 835. Every recorder shall keep a general index, direct and inverted, in his office; the direct index shall be divided into seven columns, with heads to the respective columns, as follows, to wit:

Time of reception.	Names of grantors.	Names of grantees.	Nature of instrument.	Volume and page where recorded.	Description of tract.	Remarks

He shall make correct entries in such general index of every instrument recorded, concerning or affecting real estate, under the appropriate headings, entering the names of the "grantors," in alphabetical form. The general inverted index shall be divided into seven columns, as follows, to wit:

Time of reception.	Names of grantees	Names of grantors.	Nature of instrument	Volume and page where recorded.	Description of tract.	Remarks

He shall make, in such general index, correct entries of every instrument required by law to be entered in the general index direct, entering the names of the grantees in alphabetical order; and whenever any bond, mortgage, or other instrument has been released or discharged from record, whether by written release upon the margin of the records, or by recording a deed of release, the recorder shall immediately note in both general indexes, under the column headed "Remarks" and opposite to the appropriate entry, that such instrument has been satisfied.

Recording book.

SEC. 836. He shall also keep a recording book, each page of which shall be divided into five columns, as follows, to wit:

Time of reception	Names of grantors.	Names of grantees	To whom delivered.	Fees received

Whenever any instrument has been received by him for record, he shall immediately endorse upon such instrument his certificate, noting the day, hour and minute of its reception, the volume and page where recorded, and the fees received for recording the same, and the date of record of such instrument shall be from the date of the filing of the same. Whenever any instrument has been filed as aforesaid, the recorder shall immediately make an entry of the same in his receiving book under the appropriate heading, with the amount paid as fees for recording the same; and after such instrument has been recorded, he shall deliver it to the person authorized to receive it, writing the name of the person to whom it was delivered, in the appropriate column.

Plat book.

SEC. 837. He shall also keep a large, well-bound book, in which shall be platted all maps of towns, villages, or additions to the same, within his county, together with the description, acknowledgment, or other writing thereon. He shall keep an index to such book of plats, which index shall contain the name or names of the proprietors of said town, or village, or addition. No recorder of deeds shall be bound to perform any of the duties requried to be performed by this act, for which a fee is allowed, unless such fee has been paid or tendered.

Index to each volume of records

SEC. 838. He shall keep an index of each volume of records kept in his office, showing on one page the grantors' names in alphabetical order, and on the other page the names of the grantees in alphabetical order.

Copies.

SEC. 839. Copies of all papers filed in the office of the recorder of deeds, and transcript from the books of record kept therein, certified by him under the seal of his office, shall be *prima facie* evidence in all cases.

May administer oaths and take acknowledgments.

SEC. 840. That county clerks and *ex-officio* county recorders of each county of the territory be and are hereby authorized to administer legal oaths, and take such acknowledgments to any instruments of writing required to be acknowledged by any law of this territory.

Warrants; how delivered.

SEC. 841. The county clerk shall in no case deliver any county order or warrant issued by the board of county commissioners to any person except the payee thereof, or to his agent, assignee or legal representative, whose authority to receive and receipt for the same shall be in writing and delivered to the clerk, and it shall be the duty of the board of commissioners, at each session thereof, to examine the book in which county orders or warrants are entered and ascertain to whom any county order or warrant issued by their authority shall have been delivered: and if the county clerk shall have delivered any order or warrant to any person except as herein provided, he shall be liable to the county therefor, and the amount of such order or warrant shall be deducted out of any fees, emoluments, or indebtedness due to such clerk from the county.

NOTE.—Act January 12, 1872.

Attachment book.

SEC. 842. There shall be kept in the recorder's office of the county recorder of each county, a book called "attachment book," in which shall be entered by such recorder, in alphabetical form, the names of any person or persons against whom any writ or notice of attachment has been filed in his office: there shall also be entered in said book the time such writ was filed. Such entries shall be made under appropriate heads for that purpose. For making such entry the recorder shall receive twenty-five cents, to be paid by the plaintiff in the action, and taxed and allowed to him as other costs and disbursements in the action.

NOTE—Act of February 13th, 1874

CHAPTER LXIV.

COUNTY ATTORNEYS.

Sec. 843. When county attorneys to be elected—who eligible.
Sec. 844. To give bond.
Sec. 845. Duties of county attorneys.
Sec. 846. Compensation and salary.
Sec. 847. Fees.
Sec. 848. Construction.

14th ses p 59

Election, term and qualifications.

SEC. 843. That the office of the county attorney be and the same is hereby created, and at the next general election to be held in the Territory of Montana, and every two years thereafter, there shall be elected in each county in the territory, one county attorney, who shall hold his office for the term of two years, and until his successor is elected and qualified. No person shall be eligible to the office of county attorney who is not a regularly licensed and practicing attorney at law in the Territory of Montana.

Bond and oath

SEC. 844. Each county attorney, before entering upon the discharge of the duties of his office, shall execute to the Territory of Montana, a bond in the sum of two thousand five hundred dollars, with two or more sufficient sureties, to be approved by the county commissioners of the county for which he is elected, and filed in the office of the county recorder, and conditioned for the faithful performance of the duties of his office. Said county attorneys shall also take and subscribe the oath of office prescribed by law for other county officers.

Duties

SEC. 845. It shall be the duty of each county attorney in his respective county to sign all bills of indictment that may be found by the grand jury, and to prosecute and defend, on behalf of the people, all public prosecutions and civil actions arising in his county, before the supreme, district and probate courts, wherein the Territory of Montana, or the county in which he is elected, is a party; he shall also, when practicable, appear on behalf of the people, and prosecute all criminal proceedings in the justice' courts of his county. He shall, when required by any grand juror, give his opinion on any matter of law pertaining to the duties of grand jurors, and shall be the legal adviser of territorial, county, school and township officers, and shall, when requested by any of such officers, give his opinion on any matters of law pertaining to their duties, without fee or compensation, and he shall prosecute all actions and proceedings for the forfeiture of bonds, undertakings, and recognizances, wherein the county or territory is a party, or the interests of the county or territory are involved.

Salary.

SEC. 846. The county attorneys of the counties—Custer, Deer Lodge, Gallatin, Lewis and Clarke, and Silver Bow, shall each receive as compensation for his services as county attorney, an annual salary of six hundred dollars; and the county attorneys of each county not enumerated, whether now or hereafter organized, shall receive an annual salary of four hundred dollars. All of such salaries shall be paid out of the general fund of the respective counties; one-fourth thereof payable quarterly.

Fees.

SEC. 847. In addition to the salary provided in section 846 of this chapter, the county attorney shall receive from the county treasury of the county in which he is elected, upon the allowance of the board of county commissioners, the following fees, to-wit:

For collections made for the county or territory, on all sums of five hundred dollars or less, ten per cent thereof; on all sums over five hundred dollars, ten per cent of the first five hundred dollars, and five per cent of the excess over five hundred dollars; for each conviction in case of misdemeanor, five dollars; for each preliminary examination, five dollars; for each criminal trial conducted by him in the district court, ten dollars, except capital cases, for which he shall receive twenty-five dollars; for drawing each indictment, five dollars- *Provided*, no fee shall be allowed for drawing any indictment which may be quashed, or is from any cause held to be defective. All fees in this section hereinbefore provided shall be taxed as costs. In addition to the foregoing fees, the county attorney shall receive twenty cents for each mile traveled in going to and returning from the supreme court, and shall receive twenty-five dollars for each cause tried by him in the supreme court. All fees in this section provided shall be paid by warrants drawn on the general fund or the county: *Provided, further*, that in no case shall the fees allowed by this section (not to include mileage) exceed in amount the sum of twelve hundred dollars in any county; and the county attorneys shall furnish to the county commissioners a statement of all fees received by him, which, together with the fees allowed by the county commissioners, shall not exceed said sum of twelve hundred dollars. And if any county commissioner or commissioners shall allow any county attorney an amount in excess of the sum of twelve hundred dollars, as hereinbefore provided, such commissioner shall be individually liable to the county for such excess, and which amount may be collected by suit against such commissioner or commissioners.

Officers of district attorney and attorney-general abolished.

SEC. 848. Wherever in the laws of this territory the words "district attorney" may occur, the same shall, after the election and qualification of county attorneys, as herein provided, be taken, held and construed to mean county attorney. And after the election and qualification of county attorneys, as in this act provided, the offices of attorney general and district attorney in this territory shall be and the same are hereby declared after such time abolished.

NOTE.—Chapter XLIV act of March 12, 1885.

CHAPTER XLV.

SHERIFFS.

Sec. 849. Sheriff elected for two years and to give bond.
Sec. 850. Form and condition of bond.
Sec. 851. Sheriff to appoint under-sheriff.
Sec. 852. Sheriff to appoint deputies.
Sec. 853. Appointment to be in writing and filed in office of county clerk.
Sec. 854. Sheriff to have charge of jail and prisoners.
Sec. 855. To execute all processes and attend court.
Sec. 856. Sheriff to preserve peace and suppress affrays.
Sec. 857. To deliver to successor jail and other property of the county.
Sec. 858. To execute processes received before removal or expiration of term.
Sec. 859. When misconduct of deputy breach of bond.
Sec. 860. Action for breach of bond may be prosecuted against executor or administrator.
Sec. 861. Paper to be served on sheriff may be left at his office.
Sec. 862. No sheriff to advise as attorney.
Sec. 863. Liable to fine for not serving process.
Sec. 864. Liable to fine for receiving illegal fee.

Election, term, bond.

SEC. 849. A sheriff shall be elected in each county organized lor judicial purposes for the term of two years, and who shall, before he enter upon the duties of his office, execute to this territory a bond, with at least three sufficient securities, in such penal sum not less than five thousand dollars, nor more than fifty thousand dollars, as the judge of the probate court and county clerk shall specify and approve; said board when thus approved to be filed in the office of said clerk, and no person shall be received as surety who is not worth at least two thousand dollars over and above his just debts: *Provided*, That no person shall be elected sheriff for more than two terms in succession.

Condition of bond.

SEC. 850. The condition of such bond shall be in substance as follows:

Whereas, The above bounden ——— ——— was elected to the office of sheriff of the county of ———, on the ——— day of ———; now the condition of this obligation is such that if the said ——— ——— shall well and faithfully perform and execute the duties of the office of sheriff of said county of ——— during his continuance in office, by virtue of said election, without fraud, deceit, or oppression, and shall pay over all moneys that may come into his hands as sheriff, and shall deliver to his successor all writs, papers and other things pertaining to his office, which may be so required by law, then the above obligation shall be void; otherwise to be and remain in full force and effect.

Under-sheriff.

SEC. 851. The sheriff of each county shall, as soon as may be, after entering upon the duties of his office, appoint some proper person under-sheriff of said county, who shall also be a general deputy, to hold during the pleasure of the sheriff; and as often as a vacancy shall occur in the office of such under-sheriff, or if he become incapable of executing the duties of said office, another shall in like manner be appointed in his place.

Deputies.

SEC. 852. Each sheriff may appoint such and so many deputies as he may think proper, for whose official acts and those of his under-sheriff he shall be responsible; and may revoke such appointments at his pleasure; and persons may also be deputized by such sheriff or under-sheriff, in writing, to do particular acts, and the sheriff and his sureties shall be responsible on his official bond, for the default or misconduct of his under-sheriff and deputies.

Appointment and revocation to be in writing.

SEC. 853. Every appointment of an under-sheriff, or of a deputy-sheriff, and every revocation of such appointment, shall be in writing, under the hand of the sheriff, and shall be filed in the office of the clerk of the county; but this section shall not extend to any person who may be deputized by any sheriff or under-sheriff to do a particular act only.

Custody of jails and prisoners

SEC. 854. The sheriff shall have charge and custody of the jails in his county, and of the prisoners in the same, and shall keep them himself, or by his deputy or jailer, for whose acts he and his sureties shall be liable.

Service of process, orders etc

SEC. 855. The sheriff, in person, or by his under-sheriff or deputy, shall serve and execute, according to law, all processes, writs, precepts, and orders issued or made by lawful authority, and to him directed; and shall attend upon the several courts of record held in his county.

Shall preserve the peace

SEC. 856. It shall be the duty of the sheriff and under-sheriff and depnties to keep and preserve the peace in their respective counties, and to quiet and suppress all affrays, riots and unlawful assemblies and insurrections, for which purpose, and for the service of process in civil and criminal cases, and in apprehending or securing any person for felony or breach of the peace, they, and every coroner and constable, may call to their aid such person or persons of their county as they may deem necessary.

Delivery of office, etc, to successor.

SEC. 857. Whenever a new sheriff shall be elected and shall have qualified, as required by law, the former sheriff shall, upon demand, deliver to him the jail and other property of the county, and all prisoners in such jail, and all writs, processes, orders and other papers belonging to such office, and in his possession, or the possession of his under-sheriff or deputies, except as provided in the next succeeding section; and, upon delivery thereof, such new sheriff shall execute to the former sheriff a receipt therefor.

Retiring officer may serve writs, etc, in his hands.

SEC. 858. Sheriffs, under-sheriffs, and deputies may execute and return all such writs and processes as shall be in their hands at the expiration of their term of office, or at the time of their removal from office, which they shall have begun to execute by sevice, levy or collection of money thereon.

Default of deputy, etc.

SEC. 859. Any default or misconduct in the office of deputy sheriff or jailer, after the death, resignation, or removal of any sheriff by whom he was appointed, shall be adjudged a breach of the bond of such sheriff.

Actions against executors, etc

SEC. 860. Any action for default or misconduct of any sheriff, his under-sheriff, jailer or any of his deputies, may be prosecuted against the executors or administrators of such sheriff.

Service

Sec. 861. Every paper required by law to be served on the sheriff, may be served on him in person or left at his office during business hours.

Shall not be attorney.

Sec. 862. No sheriff, under-sheriff or deputy shall appear or advise as attorney or counselor in any case in any court.

Misconduct

Sec. 863. Whenever any sheriff shall neglect to make due return of any writ or process delivered to him to be executed, or shall be guilty of any default or misconduct in relation thereto, he shall be liable to fine or attachment, or both, at the discretion of the court, subject to appeal—such fine, however, not to exceed two hundred dollars—and also an action for damages to the party aggrieved.

Shall not demand fees except as provided

Sec. 864. No sheriff shall, directly or indirectly, ask, demand or receive, for any service to be by him performed in the discharge of any of his official duties, any greater fees than are allowed by law, on pain of forfeiture of treble damages to the party aggrieved, and of being fined in a sum not less than twenty-five dollars and not more than two hundred dollars.

Note.—Act January 12, 1872.

CHAPTER XLVI.

CORONER.

Sec. 865. Coroner to be elected and give bonds.
Sec. 866. Coroner to exercise power of sheriff in certain cases.
Sec. 867. To execute process when sheriff a party.
Sec. 868. To serve process when sheriff prejudiced or related to party in suit.
Sec. 869. To hold inquest—when and how.
Sec. 870. To summon jurors and administer oaths.
Sec. 871. May issue subpœnas and punish for contempt.
Sec. 872. Oath to witnesses.
Sec. 873. To reduce testimony to writing.
Sec. 874. Form of verdict
Sec. 875. To be kept secret—when.
Sec. 876. Coroner may order arrest.
Sec. 877. May issue warrants of arrest.
Sec. 878. Warrant of equal autority with justice's.
Sec. 879. What warrant to contain.
Sec. 880. What to return to district court.

Sec. 881. To have body buried and expense paid.
Sec. 882. When justice to act as coroner.
Sec. 883. When to summon surgeon to inquisition.

SEC. 865. A coroner shall be elected in each county for the term of two years, who shall, before he enter upon the duties of his office, give bonds to this territory in such penal sum, not less than five hundred dollars nor more than five thousand dollars, with sufficient sureties, not less than two in number, as the county treasurer shall direct and approve, the condition of which bond shall be in substance the same as that given by the sheriff, such bond to be filed with the clerk of the proper county.

Election, term and bond

SEC. 866. When there shall be no sheriff in the county organized for judicial purposes, it shall be the duty of the coroner to exercise all the powers and duties of the sheriff of his county until a sheriff be elected and qualified; and when the sheriff, from any cause, shall be committed to the jail of his county, the coroner shall be keeper thereof during the time the sheriff shall remain prisoner therein.

To fill sheriff's office in case of vacancy.

SEC. 867. Every coroner shall serve and execute processes of every kind, and perform all other duties of the sheriff, when the sheriff shall be a party to a case, or when affidavit shall be made and filed, as provided in the succeeding section; and in all such cases he shall exercise the powers and proceed in the same manner as prescribed for the sheriff in the performance of similar duties.

Shall serve process, etc, when sheriff is party

SEC. 868. Whenever any party, his agent, or attorney, shall make and file with the clerk of the proper court an affidavit, stating that he believes that the sheriff of such county will not, by reason of either partiality, prejudice, consanguinity, or interest, faithfully perform his duties in any suit commenced, or about to be commenced, in said court, the clerk shall direct the original or other process in such suit to the coroner, who shall execute the same in like manner as the sheriff might or ought to have done.

If sheriff interested coroner to act

Sec. 869. The coroner shall hold an inquest upon the dead bodies of such persons only as are supposed to have died by unlawful means, or the cause of whose death is unknown. When he has notice of the dead body of any person supposed to have died by unlawful means, the cause of whose death is unknown,

Inquest

found or being in the county, it shall be his duty to summon, forthwith, six citizens of the county to appear before him at a time and place named.

Oath of juror.

SEC. 870. If any juror fail to appear, the coroner shall summon the proper number from by-standers immediately, and proceed to impanel them, and administer the following oath in substance:

You do solemnly swear (or affirm) that you will diligently inquire, and true presentment make, when, how, and by what means the person whose body lies here dead came to his death, according to your knowledge and the evidence given you. So help you God.

14th ses p. 73

Subpœnas, fees of jurors, witnesses, etc.

SEC. 871. The coroner may issue subpœnas within his county for witnesses, returnable forthwith, or at such time and place as he shall therein direct; and jurors and witnesses shall be entitled to receive the same fees and mileage as are now allowed by law before a justice of the peace; and the coroner shall have the same authority to enforce the attendance of jurors and witnesses, and to punish them for contempt in disobeying process, as a justice of the peace has, when his process issues in behalf of the territory.

NOTE—Section 871, act of February 20th, 1885

WITNESS'S OATH.

Oath of witness.

SEC. 872. An oath shall be administered to the witnesses in attendance, as follows:

You do solemnly swear that the testimony which you shall give to this inquest concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth. So help you God.

TESTIMONY.

Written testimony.

SEC. 873. The testimony shall be reduced to writing, under the coroner's order, and subscribed by the witnesses.

VERDICT.

Verdict.

SEC. 874. The jurors, having inspected the body, heard the testimony, and made all needful inquiries, shall return to the coroner their inquisition, in writing, under their hands, in substance, as follows, and stating matters in the following form suggested, as far as found:

TERRITORY OF MONTANA, } ss.
County of.......... }

An inquisition holden at..........., in the county of..........., on the........day of........, A. D., 18...., before me................, coroner of said county, upon the body of............... (or person unknown), there lying dead, by the jurors whose names are hereunto subscribed, the said jurors, upon their oaths, do say (here state when, how, by what person, means, weapons, or accident he or she came to his or her death, and whether feloniously). In testimony whereof the said jurors have hereunto set their hands the day and year aforesaid.

SAME, SECRET.

Inquest secret till after arrest.

SEC. 875. If the inquisition find a crime has been committed on the deceased, and name the person whom the jury believes has committed it, the inquest shall not be made public until after the arrest, directed in the next section.

Warrant.

SEC. 876. If the person charged be present the coroner may order his arrest, by an officer or any person, and shall make a warrant requiring the officer or other person to take him before a justice of the peace.

Same

SEC. 877. If the person charged be not present, and the coroner believes he can be taken, the coroner may issue a warrant to the sheriff, or any constable of the county, requiring him to arrest the person and take him before a justice of the peace.

Authority of warrant

SEC. 878. The warrant of the coroner in the above cases shall be of equal authority with that of a justice of the peace; and when the person charged is brought before the justice of the peace, he shall be dealt with as a person held under a complaint in the usual form.

Recital in warrant.

SEC. 879. The warrant of the coroner shall recite substantially the proceedings had before him, and the verdict of the jury of inquest leading to the arrest, and such warrant shall be a sufficient foundation for the proceeding of the justice, instead of a complaint.

RETURN.

Return

SEC. 880. The coroner shall then return to the district court the inquisition, the written evidence, and the list of the witnesses who testified material matter.

BURIAL EXPENSES.

Burial expenses

SEC. 881. The coroner shall cause the body of a deceased person which he is called to view to be delivered to his or her friends, if there be any, if not, he shall cause him or her to be decently buried, and the expenses to be paid from any property found with the body, or if there be none, from the county treasury, by certifying an account of the expenses, which, being presented to the board of county commissioners, shall be allowed by them if deemed reasonable, and paid as other claims on the county.

JUSTICES TO ACT AS CORONER.

When justice may act as coroner.

SEC. 882. When there is no coroner, or in case of his absence or inability to act, any justice of the peace of the same county is authorized to perform the duties of coroner in relation to dead bodies.

SURGEON.

Scientific examination.

SEC. 883. In the above inquisition by a coroner, when he or a jury shall deem it requisite, he may summon one or more physicians or surgeons to make scientific examinations, and may allow, in such cases, a reasonable compensation, subject to the confirmation of the board of county commissioners.

NOTE.---Act January 12, 1872.

CHAPTER XLVII.

COUNTY TREASURER.

Sec. 884. To be elected and give bond.
Sec. 885. Condition and form of bond.
Sec. 886. Treasurer may appoint deputy.
Sec. 887. Same.
Sec. 888. Repeal.
Sec. 889. Vacancy occurring county commissioners may appoint.
Sec. 890. Certain persons shall not be treasurer.
Sec. 891. To receive and pay out moneys.
Sec. 892. To keep books open to inspection and to settle with county commissioners.
Sec. 893. How county orders entitled to payment.
Seb. 894. To deliver all books and papers to successor; penalty for not doing.
Sec. 895. Treasurer to be collector of taxes.
Sec. 896. To assess property not assessed by assessor.
Sec. 897. County warrants—how registered.

Election, term and bond.

SEC. 884. A county treasurer shall be elected in each county for the term of two years, and shall, before entering upon the discharge of his duties, execute to the board of county commissioners of his county a bond with three or more sufficient sureties, to be approved by the board, and in such penal sum as they may direct; which bond, with the approval of the board endorsed thereon by their clerk, shall be filed in the office of the county clerk; and in case the board of commissioners shall not be in session in time for any county treasurer to present his bond for their approval as above specified, or he shall be unable from any cause to present his bond at any regular meeting of the board, after due notice of his election, then it may be lawful for such treasurer to present his bond to the chairman and clerk of such board for their approval; and their approval endorsed thereon shall have the same effect as if done by the board of commissioners; and in such case, when the board shall not have fixed the penal sum of such bond, it shall not be less than double the amount of all the moneys directed by the board to be levied in the county and to be paid to the treasurer during the year.

Condition of bond

SEC. 885. The condition of such bond shall be in substance as follows:

Whereas, the herein bounden.... .... was elected to the office of county treasurer of the county of................. on the.... ....day of........ A. D., 18... Now, therefore, the condition of this obligation is such that if the said ....and his deputy, and all persons employed in his office, shall faithfully and promptly perform the duties of said office, and the said ....and his deputies shall pay according to law all moneys which shall come to his hands as treasurer, and will render a just and true account thereof whenever required by said board of county commissioners, or by any provision of law, and shall deliver over to his successor in office, or to any person authorized by law to receive the same, all moneys, books, papers and other things appertaining thereto, or belonging to his office, the above obligation to be void, otherwise to be in full force.

Deputies.

SEC. 886. The county treasurer may appoint a deputy, who, in the absence of the treasurer from his office, or in case of vacancy in said office, for any disability of the treasurer, shall perform all the duties of the office of treasurer until such vacancy be filled, or such disability be removed.

Same.

SEC. 887. That it shall be the duty of the county treasurers of the several counties of this territory having an assessed valuation of seven million dollars, or over, to appoint a deputy treasurer at a compensation not to exceed one hundred dollars per month, to be paid by the county commissioners of such county in warrants drawn on the contingent fund.

Repeal

SEC. 888. That all acts and parts of acts in conflict with this act be, and the same are hereby repealed.

NOTE.—Sections 887 and 888 are respectively sections 1 and 2, and comprise all of "An act to provide for deputy county trreasurers and to fix their compensation; "approved February 18th, 1887.

Vacancy may be filled by commissioners

SEC. 889. In case the office of county treasurer shall become vacant, the board of county commissioners may, if in their opinion the interests of the county require it, appoint a suitable person to perform the duties of such treasurer; and the person so appointed, upon giving bond, with like sureties and condition as that required in county treasurer's bonds, and in such sum as said board shall direct, shall be invested with all the duties of such treasurer until such vacancy shall be filled, or in case of any disability, till such disability be removed.

Who not eligible as treasurer.

SEC. 890. No person holding the office of sheriff, judge of probate, county attorney, county clerk, deputy county treasurer, nor any member of the board of commissioners, shall hold the office of county treasurer.

Duty as to money.

SEC. 891. It shall be the duty of each county treasurer to receive all moneys belonging to his county, from whatsoever source they may be derived, and other moneys which are by law directed to be paid to him. All moneys received by him for the use of the county shall be paid out by him only on the orders of the board of commissioners, according to law, except when specified provision for the payment thereof is or shall be otherwise made by law.

Accounts and settlements.

SEC. 892. Each county treasurer shall keep a just and true account of the receipts and expenditures of all moneys which shall come into his hands by virtue of his office, in a book or books to be kept by him for that purpose, which books shall be open at all times for the inspection of the board of county commissioners, or any member thereof, and to all county and territorial officers; and at the annual meeting of said board of commissioners, or at such other time as they may direct, he shall settle with them his account as treasurer, and for that purpose he shall exhibit to them all his books and accounts, and all vouchers relative to the same, to be audited and allowed.

Payment of county orders

SEC. 893. County orders, properly attested, shall be entitled to preference, as to payment, according to the order of time in which they may be presented to the county treasurer, but when two or more orders are presented at the same time, preference shall be given to the order of the oldest date.

NOTE—Act February 9th 1874

Delivery of books, etc, to successor

SEC. 894. Upon the resignation or removal from office of any county treasurer, all books and papers belonging to his office, and all moneys in his hands by virtue of his office, shall be delivered to his successor in office, upon oath of such preceding county treasurer; or, in case of his death, upon oath of his executors or administrators. If any such preceding county treasurer, or in case of his death, if his executors or administrators, shall neglect or refuse to deliver up such books, papers and moneys, on oath, when lawfully demanded, every such person shall forfeit a sum not less than one hundred dollars, nor more than five hundred dollars, and be also liable on his official bond for such refusal or neglect.

Collector of taxes

SEC. 895. The county treasurer of each county shall be, by virtue of his office, collector of taxes therein, and shall perform such duties in that regard as are prescribed by law.

To assess in certain cases; may administer oaths

SEC. 896. It shall be the duty of said county treasurer to assess at a fair value the property of any person liable to pay taxes whom the county assessor has failed to assess, and to place the same on the tax dnplicate, and to collect taxes on the same in the manner provided by law: *Provided, however*, That said treasurer shall not be compelled to assess such property in person. *Provided further*, That he be authorized to administer oaths to such persons, or any others, touching the value of said property.

Duty as to registration and payment of warrants.

SEC. 897. The county treasurer shall not register any county order or warrant in the name of any person other than the payee thereof, except at the request of such payee, or his agent, assignee, or legal representative, whose authority shall be produced to such treasurer in writing, and the county treasurer shall not pay any order or warrant except to the payee thereof, or to his agent, assignee, or legal representative, whose authority shall be in writing, and delivered to such treasurer, and shall be returned with such order or warrant, when paid, to the board of commissioners.

NOTE—Act of January 12th, 1872, except where otherwise noted

CHAPTER XLVIII.

COUNTY SURVEYOR.

Sec. 898. County surveyor to be elected; term of office; bond.

Sec. 899. May appoint assistants; certificate of, legal evidence.

Sec. 900. Duty to execute survey ordered by court.

Sec. 901. To keep record of survey.

Sec. 902. County commissioner to appoint to fill vacancy.

Election term and bond.

SEC. 898. A county surveyor shall be elected for the term of two years, who shall give bond to the board of county commissioners, to be approved by the county clerk of the proper county, in the sum of one thousand dollars, conditioned for the faithful discharge of his duties.

Assistants; certificates.

SEC. 899. The county surveyor may appoint as many assistants as he may think proper, for whose official acts he shall be responsible. The certificate of the county surveyor, or any of his deputies, shall be admitted as legal evidence in any court of the territory, but the same may be explained or rebutted by other evidence.

14th ses. p. 71.

To execute certain surveys. compensation.

SEC. 900. It shall be the duty of the county surveyor, by himself or one of his deputies, to execute any survey which may be required by any court, upon the application of any individual or corporation, and shall execute any survey required by the board of county commissioners. He shall be paid for his services seven dollars per day while making the survey, the amount, in the first instance, to be paid by the person or corporation for whose benefit the survey is made, and in the other, by the county commissioners, by order on the county treasurer, against the proper fund.

NOTE.—Section 900 act of March 12th, 1885

Record, field notes and copies of surveys.

SEC. 901. The said surveyor shall keep a correct and fair record of all surveys made by him or his deputies in a book to be provided for that purpose by the county, which shall be transmitted to his successor in office. He shall also number each survey, progressively, and shall preserve a copy of field notes and calculations of each survey, endorsing thereon its proper number, a copy of which, and also a fair and accurate plat, together with a certificate of survey, shall be furnished by said surveyor to any person requiring the same.

SEC. 902. If the office of county surveyor be at any time vacant, the board of county commissioners are hereby empowered to appoint some suitable person to perform the duties of the office until a county surveyor be elected.

Commissioners may fill vacancy.

CHAPTER XLIX.

ASSESSOR.

Sec. 903. To be elected in each county; term of office.

Sec. 904. Bond, official oath, vacancies.

Sec. 905. Not to be re-elected to succeeding term.

Sec. 906. Deputy assessors.

Sec. 907. Duties as to special poor tax.

Sec. 908. From whom and how special poor tax collected.

Sec. 909. How collected from persons in the employ of corporations, companies, etc.

Sec. 910. Corporations to furnish a list of employes.

SEC. 903. There shall be elected in each of the counties of this territory, at the next general election, and biennially thereafter, one assessor, who shall hold his office for the term of two years, and until his successor is elected and qualified: *Provided*, That all assessors elected at the first general election after the passage of this article shall not take office until after the expiration of the term of the present incumbent in their respective counties.

Election and term.

SEC. 904. Each county assessor shall, before entering upon the duties of his office, give a bond in a sum not less than two thousand dollars, or more, if the county commissioners so elect, with two or more sufficient sureties, conditioned for the faithful performance of his duties according to law, and to the satisfaction of the county commissioners, and shall take and subscribe an oath of office, which shall be endorsed on such bond; the bond must be approved by the commissioners, and shall be deposited with the county clerk. Said assessor shall give the bond and take the oath of office herein required on or before the first Monday in December after his election, and if the county clerk receives no notice of the qualification of such assessor on or before the said first Monday in December after the election, the office shall be declared vacant; or if there be a failure to elect by the people, or if there shall be, at any time, or from any

Bond and oath

cause, a vacancy in the office of assessor, or if said assessor, having qualified, shall fail to proceed to the discharge of the duties of his office before the first day of February in each year, the county commissioners shall forthwith appoint one suitable person, a resident of the county, to discharge the duties of county assessor, who shall thereupon take the necessary oath of office, give the same bond, perform the same duties, be entitled to the same fees and subject to the same liabilities as in case of assessors elected by the people

Not eligible for second successive term

SEC. 905. No person who shall have served one term of two years as assessor in any county shall be elegible to the next succeeding term: *Provided*, That the provisions of this article shall not apply to the election of assessor, or his eligibility to such office, in those counties wherein it is provided by law that the sheriff shall be, by virtue of his office, *ex-officio* assessor.

NOTE —Act of February 16, 1877.

Deputy

SEC. 906. That the several assessors and *ex-officio* assessors of the several counties may, by and with the consent and approval of the board of county commissioners, appoint one deputy, who shall be sworn and give a bond the same as the principal himself, and such deputy may do and perform, under the direction of said county commissioners, any and all official acts and duties that the assessor is now required by law to do and perform.

NOTE —Act February 20, 1879.

14th ses. p. 105

To enter special poor tax.

SEC. 907. It shall be the duty of assessors to enter upon all assessment lists returned by them the special poor tax now required by law, and they shall be entitled to receive thereon the same compensation allowed them for the assessment of property in their county, but for the collection of the special poor tax of persons who pay no property tax they shall be entitled to receive ten per cent thereof.

NOTE —Section 907 act of March 12th, 1885.

13th ses. p. 35.

To collect special poor tax.

SEC. 908. It shall be the duty of the respective assessors of the several counties of this territory to collect the special poor tax now required by law of such persons as pay no property tax at the time the same is levied, and for the purpose of enforcing such collections the said assessor shall have the power and authority to sue therefor in the name of the Territory of Montana, by attachment or otherwise, and may serve all papers or processes necessary to be served in such proceedings, and be entitled to the same fees as are by law allowed to sheriffs for like services; *Provided, however*, That such fees shall in all cases be paid by the parties owing such tax.

Notice to employer.

SEC. 909. And in all cases where the person or persons owing such poor tax shall be at the time of the levy thereof by the assessor employed by an individual, company, corporation or association, the said assessor may deliver to the superintendent or other managing agent of said individual, company, corporation or association, a ticket or notice of such levy, against such employe or employes, and from the time of the delivery of such ticket or notice to such superintendent or other managing agent, the said individual, company, corporation or association, shall be liable to such assessor for such tax, to the amount of any sum owing to such employe, and may pay the same to such assessor upon receiving his receipt therefor, and the sum so paid may thereafter be deducted from the wages or salary of such employe or employes by the said individual, company, corporation or association.

List of employes to be furnished to assessor.

SEC. 910. And that for the purpose of making a correct and complete levy of such tax upon the employe or employes of any such individual, company, corporation or association, upon the demand of the assessor the said individual, company, corporation or association, are hereby required to furnish to said assessor a true, correct, and complete list of the names of such employes, and if after such demand the said individual, company, corporation or association, shall refuse or neglect for the space of five days to furnish such list, then the said assessor shall immediately proceed to make such levy according to his best information, and after such levy and notice as hereinbefore provided, the said individual, company, corporation or association, as the case may be, shall be liable to such assessor for the whole tax thus levied, to the extent of the sum owing the employe.

NOTE.—Sections 908, 909 and 910, act of Feb 15th, 1883

CHAPTER L.

MISCELLANEOUS PROVISIONS.

Sec. 911. County offices—where kept; when kept open; books, papers, &c., to be kept open for examination.

Sec. 912. County officers to take oath and file bond—when.

Sec. 913. Deputy to make and file same oath as principal.

Sec. 914. Sureties on bonds to be bona fide residents and tax payers.
Sec. 915. Additional securities may be required of county officers.
Sec. 916. Semi-annual examination to be made as to the sufficiency of sureties on bonds.
Sec. 917. Judges of the district courts to examine bonds of county commissioners.
Sec. 918. Record of examination to be made.
Sec. 919. Evidence offered as to sufficiency of bonds.
Sec. 920. Officer may be cited to show cause why new bond should not be given.
Sec. 921. Failure to give required bond to vacate office.
Sec. 922. Procedure of sureties to obtain a release.
Sec. 923. Liability of sureties defined.
Sec. 924. Sureties liable for previous acts of principal.
Sec. 925. Copies of records and files to be evidence.
Sec. 926. Officers acting in capacity of others to have same powers and fees.
Sec. 927. Penalty for refusing to perform duties.

Where certain offices to be kept; hours.

SEC. 911. Each sheriff, county clerk, county treasurer, county attorney, and probate judge, shall keep his office at the county seat of his county, and in the office provided by the county, if any such has been provided, and if there be none established, then at such place as shall be fixed by special provision of law, or if there be no such provision, then at such place as the board of county commissioners shall direct, and they shall each keep the same open during the business hours of each day (Sundays excepted), and all books and papers required to be in their office shall be open for the examination of any person, and if any person or officer shall neglect to comply with the provisions of this section, he shall forfeit for each day he so neglect the sum of five dollars.

Official bonds and oaths.

SEC. 912. Each county or township officer named in this and the succeeding article shall, before entering upon the duties of his office, and within twenty days after receiving official notice of his election or appointment, or within twenty days after the commencement of the term for which he was elected, execute and deposit his official bond, as prescribed by law, and any such officer shall also, within the same time, take and subscribe the oath of office prescribed by law, before some officer authorized to administer oaths, and deposit the same, with his official bond, to be filed and preserved therewith.

Bonds and oaths of deputies

SEC. 913. Every deputy, appointed to any of said offices, shall, before entering upon his duties under such appointment, take and subscribe to the like oath of office as that required to be taken by the officer appointing him, and shall deposit the same in the office where the bond of such officer is deposited.

12th ses. p. 39.

Sureties.

SEC. 914. In all cases in which official bonds are required to be given by the county officers of the several counties of this territory, the sureties thereon must be *bona fide* residents and taxpayers of the county in which such officers are elected or appointed.

12th ses p 39.

Additional bonds may be registered.

SEC. 915. All county officers who are required by law to give official bonds may be required by the board of county commissioners of the county in which they have been elected or appointed, to give additional security or new bonds whenever the security of the bond previously given has become insufficient or inadequate by the insolvency, death or removal of the sureties, or any of them, or when, from any cause such bond shall be deemed insufficient; and any officer failing to give additional security or a new bond as provided in this chapter, shall be deemed to have vacated his office.

12th ses. p 39.

Commissioners to inquire into sufficiency of bonds.

SEC. 916. It shall be the duty of the board of county commissioners of each county, at their regular meetings on the first Monday in the months of March and September in each year, to examine and inquire into the sufficiency of the official bonds of all other county officers of their respective counties; and, whenever they shall find the official bond of any such officer insufficient, they shall require a new and sufficient bond to be given in such sum as they may deem necessary, not exceeding in amount the security now provided by law.

12th ses p. 39

District courts to inquire as to commissioners bonds

SEC. 917. It shall be the duty of the judges of the district courts, on the first day of each term thereof held in the several counties of this territory, in open court, to examine and inquire into the sufficiency of the official bonds of the county commissioners of the county in which such court shall be held; and whenever the said court shall find the official bond of any county commissioner insufficient, he shall order a new bond to be given.

12th ses. p. 39.

Examination to be entered of record.

SEC. 918. The said boards of county commissioners, and the said courts, at the times herein before provided for the making of such examination, shall cause an entry to be made upon the records of their said boards or courts, respectively, showing that an examination and inquiry into the sufficiency of the official bonds within their cognizance has been made, and that they are deemed sufficient, or insufficient, as the facts may justify.

12th ses. p. 40.

Person interested may suggest insufficiency of bonds.

SEC. 919. Any person having an interest in the sufficiency of the official bond of any of the officers hereinbefore referred to may appear before the board of county commissioners, or court, as the case may be, at the time of the examination of official bonds, and make suggestions as to the sufficiency of any such bond, and offer evidence tending to show the same to be insufficient, and any officer whose bond is being examined may also appear and introduce evidence tending to show the sufficiency of his official bond.

12th ses. p 40.

Order to show cause why new bond should not be given

SEC. 920. If, upon such examination, the said boards of county commissioners, or courts, as the case may be, is of opinion that the bond of any officer is for any cause insufficient, the said board, or court, shall order such officer to appear before them, or him, on a day to be named in the order, and show cause why he should not be required to give a new bond with sufficient sureties.

12th ses. p. 40.

Office vacated if bond not given.

SEC. 921. If such officer fails to appear, or satisfy said board of county commissioners or court that his official bond is sufficient, said board or court, shall require him, within a reasonable time, not exceeding twenty days, to give a new bond with sufficient sureties, to be approved by the said board, or court; and if such bond be not given within the time named, the said officer shall be deemed to have vacated his office, and the vacancy so occurring shall be filled in the manner provided by law.

12th ses. p. 40.

Surety may be released.

SEC. 922. When a surety upon the official bond of any county officer, or the heir, executor or administrator of such surety desires to be released from such bond, he may give notice in writing to the officer upon whose bond he is surety, that he desires to be so released, and that such officer give a new bond with sufficient sureties within twenty days after receiving such notice, and may, within five days after the service of such notice, deliver a copy of the same, with an affidavit showing the time and manner of service, to the court or board of county commissioners authorized by this act to examine into the sfficiency of the bond of such officer, and if such officer shall not, within twenty days after receiving such notice, or such further time, not exceeding thirty days, as the said court, or board shall allow, give a new bond, with sufficient security, his office shall become vacant, and the vancancy shall be filled in the manner provided by law.

12th ses p 40. Same

SEC. 923. If a new bond shall be given by any officer, as provided in the foregoing sections of this chapter, then the former sureties of such officer shall be released and discharged from all liabilities incurred by such officer from and after the date of the approval of such new bond by the said board of county commissioners, or court, as the case may be, and the sureties upon the new bond so given shall be liable for the acts of such officer from and after the approval of the same, as aforesaid.

12th ses. p 41 No release prior to filing new bond.

SEC. 924. The provisions of this act shall not be so construed as to release the sureties of any county officer from any liability incurred previous to the filing and approval of a new bond, as hereinbefore provided.

NOTE —Sections 914 to 924, inclusive, Act of February 23, 1881.

Copies as evidence

SEC. 925. Copies of all documents, writs, proceedings, instruments, papers and writings, duly filed or deposited in the office of any judge of probate, county clerk or county treasurer, and transcript from books of record or proceedings kept by any of said officers, with the seal of his office affixed, shall be *prima facie* evidence in all cases.

Powers of justice when acting for another officer

SEC. 926. Whenever any justice of the peace shall be required to act as coroner in any case, or any coroner shall be required to act as sheriff, or any other officer in this territory shall be required to perform any duties belonging to any other officer, he shall, for the time being, have the same powers, in respect to those duties, as are given by law to the officer whose duties he shall perform, and shall be entitled to receive the same compensation for his services.

Penalty for failure to perform official duty.

SEC. 927. Any district, county or township officer, whether elected or appointed to such office, who shall fail or refuse to perform any duty by law required of him as such officer, shall be guilty of a misdemeanor, and, on conviction, shall be fined in any sum not less than fifty nor more than one hundred dollars, and shall be imprisoned in the county jail for a term of not more than ninety days, and, upon such conviction, shall not receive any fee whatever for the performance of the duties of his office; and the boards of the commissioners of the several counties are prohibited from auditing or paying such officer any fee, salary or compensation whatever.

NOTE.—Act February 21, 1879.

CHAPTER LI.

JUSTICES AND CONSTABLES.

Sec. 928. Number of justices and constables to be elected in each township.
Sec. 929. Justices to give bond and take oath.
Sec. 930. Constables to give bond and take oath.

12th ses. p. 59.

Election and term.

SEC. 928. At the next general election, and biennially thereafter, there shall be elected by the qualified voters of each township which may be organized by the board of county commissioners, two justices of the peace and two constables, who shall be elected for the term of two years.

NOTE.—Section 928 act of February 9, 1881.

Bond and oath of justice.

SEC. 929. Every justice of the peace, after he has received his certificate of election, shall, before entering upon the duties of his office, be required to execute an undertaking to the Territory of Montana in the penal sum of two thousand dollars, with at least two sufficient sureties, who shall certify the same according to law, which said undertaking shall be approved by the county clerk, and, in addition, such justice shall take and subscribe to an oath, or make affirmation to support the constitution of the United States and the organic act of this territory, and that he will well and truly perform all the duties which may be required of him by law, and which oath or affirmation shall be endorsed upon his official undertaking, which shall be filed with the county clerk.

Bond and oath of constable.

SEC. 930. Every constable elected or appointed, after he has received his certificate of election or appointment, shall, before entering upon the duties of his office, be required to execute an undertaking to the Territory of Montana in the penal sum of two thousand dollars, with two sufficient sureties, and comply with the previous section, as justices of the peace are required by law to do.

NOTE ---Act of January 12, 1872.

CHAPTER LII.

COMPENSATION OF COUNTY OFFICERS, AND JUSTICES OF THE PEACE AND CONSTABLES.

Sec. 931. Fees for services of county officers to be collected for and paid into the county treasury.
Sec. 932. Officers to report quarterly; exceptions.
Sec. 933. Compensation of deputies, clerks, &c.

Sec. 934. Officers to keep an accurate account of moneys received.
Sec. 935. Salaries to be paid county officers.
Sec. 936. Officers to pay into the county treasury moneys received by them quarterly.
Sec. 937. Duty of sheriff on expiration of his term of office.
Sec. 938. Penalty for neglect to pay by county officers.
Sec. 939. Bondsmen for county officers liable for neglect of county officers.
Sec. 940. Duty of county commissioners; form of receipt to be given by county officers.
Sec. 941. Reasonable traveling expenses to be allowed sheriffs and deputies.
Sec. 942. Compensation of justices of the peace.
Sec. 943. Compensation of constables.
Sec. 944. Mileage of county officers, jurors and witnesses.
Sec. 945. Salaries of certain officers fixed.
Sec. 946. Salaries of clerks of courts.
Sec. 947. Salaries of deputy clerks.
Sec. 948. Fees of clerks of courts and deputies.
Sec. 949. Salaries of county clerks and recorders.
Sec. 950. Salaries payable quarterly.
Sec. 951. Fees of clerks and recorders.
Sec. 952. Salaries of superintendents of schools.
Sec. 953. Salaries of county treasurers.
Sec. 954. Payable quarterly.
Sec. 955. Compensation of assessors.
Sec. 956. Fees of sheriffs.
Sec. 957. Fees of justices of the peace.
Sec. 958. Fees of probate judge.
Sec. 959. Fees of constables and marshals.
Sec. 960. Statement of fees.
Sec. 961. No other compensation than as specified.
Sec. 962. Sheriff to make statement.
Sec. 963. Act of March 12, 1885, repealed.
Sec. 964. Takes effect and when.

14th ses. p. 63.

Fees of officers to be collected and paid into county treasury

SEC. 931. The fees, costs, percentages, penalties, allowances, and all other perquisites, of whatever kind, which by law any probate judge, sheriff, treasurer, county clerk, recorder, clerk or deputy clerk of the district court, assessor, county superintendent of common schools, in every county in this territory, is or may hereafter be authorized to charge, receive, and collect for any official service rendered by him or them, shall hereafter be received and collected by the said officers respectively, to and for the sole use of the county treasuries of their respective counties, as public moneys, belonging to said counties, and not otherwise, and shall be accounted for and paid over as such in the manner hereinafter provided: *Provided, however*, that nothing in this chapter shall be held to appy to the compensation received by the sheriffs for board of prisoners, or the assessor for registering voters.

Exception

Quarterly reports.

SEC. 932. That it is hereby made the duty of the several officers named in section 931 of this chapter to report to the county commissioners of their respective counties quarterly, during each year of their official term, a certified and sworn statement in detail, of all costs, fees, percentages, penalties, allowances, and other perquisites of every kind, charged in his office, whether taxed in any cause, matter or proceeding, or otherwise, and receivable by him for any services rendered by him during the quarter next preceding the time of making such statement, showing the whole amount thereof, how much thereof has been received by him, how much thereof remains uncollected, the names of the persons from whom the same are due, and the amount due from each, and the reason why the same has not been collected: *Provided, however*, that the sheriff, probate judge and clerk of the district court shall not be required to report as to the uncollected fees and costs in any suit, matter or proceeding, which, at the time of making any such quarterly report, shall be pending and not determined by a final order or judgment; but all such uncollected fees and costs shall be reported in full in the next quarterly report, if the said suit, matter or proceeding shall have been determined by a final order or judgment: *And provided further*, That the treasurer shall not be required to report the fees, percentages, allowances, or penalties receivable by him for collecting taxes that are charged upon the tax duplicate, until his settlement with the county commissioners, but immediately after said settlement he shall pay the same into the county treasury.

Exception.

Deputies and assistants

SEC. 933. The maximum compensation which shall be allowed to any deputy or assistant employed to assist the officers named in section 931 of this chapter, is hereby fixed and limited as follows: For the under-sheriff, not to exceed the rate of fifteen hundred dollars per annum; for each deputy sheriff, or clerk of the probate court, or each deputy or assistant employed to assist the treasurer, clerk and recorder, or clerk of the district court or deputy, the compensation shall not exceed the rate of one hundred dollars per month: *Provided*, the whole number of assistants or deputies allowed the county clerk and recorder shall not exceed two, nor shall there be more than one clerk or assistant of the probate court or judge, nor more than one assistant for the treasurer, nor more than one deputy or assistant for the clerk of the district court in addition to the deputy now provided by law, in each county. The assessor and treasurer shall not employ any deputy or assistant at the cost of the county, but, if any be employed, the assessor and treasurer shall pay therefor personally. The number of deputy clerks or assistants, if any, and the question as to whether any under-sheriff shall be employed, under the provisions of this section, and the compensation of such persons when so employed, shall be determined by the board of county commissioners, and subject to all the limitations herein prescribed. The salaries herein provided for, or so much thereof as may be allowed, shall be paid by warrants drawn on the contingent funds of the respective counties; one-fourth thereof payable quarterly.

Number of assistants to be regulated by county commissioners.

SEC. 934. That each of said officers shall keep full and regular accounts, subject at all times to the examination of any officer or citizen of the county, of all sums collected by him on account of official fees, costs, penalties, percentages, allowances, and other perquisites, of whatever kind, and said books of account shall be a part of the records of their respective offices, and belong to the county, and shall be transmitted to their successors in office.

Officers to keep accounts.

SEC. 935. That the said officers named in section 931 of this chapter shall each be allowed to receive, as annual compensation for their sevices, as officers of their respective counties, as follows, to-wit:

Compensation of county officers.

BEAVERHEAD COUNTY.

Treasurer	one thousand four hundred dollars.
Sheriff	one thousand eight hundred dollars.
Assessor,	one thousand dollars.
Clerk and Recorder	one thousand eight hundred dollars.
Deputy Clerk of district court,	five hundred dollars.
Probate Judge	one thousand dollars.
Superintendent of public schools,	five hundred dollars.

CHOTEAU COUNTY.

Treasurer	two thousand five hundred dollars.
Sheriff	three thousand dollars.

Assessor	two thousand dollars.
Clerk and Recorder	two thousand five hundred dollars.
Deputy Clerk of district court	one thousand two hundred dollars.
Probate Judge	one thousand five hundred dollars.
Superintendent of public schools	one thousand dollars.

CUSTER COUNTY.

Treasurer	two thousand five hundred dollars.
Sheriff	three thousand dollars.
Assessor	one thousand seven hundred and fifty dollars.
Clerk and Recorder	two thousand dollars.
Deputy Clerk of District Court	one thousand five hundred dollars.
Probate Judge	one thousand five hundred dollars.
Superintendent of schools	seven hundred and fifty dollars.

DAWSON COUNTY.

Treasurer	two thousand dollars.
Sheriff	two thousand five hundred dollars.
Assessor	one thousand five hundred dollars.
Clerk and Recorder	two thousand dollars.
Deputy Clerk of District Court	one thousand dollars.
Probate Judge	one thousand dollars.
Superintendent of schools	six hundred dollars.

DEER LODGE COUNTY.

Treasurer	two thousand five hundred dollars.
Sheriff	three thousand dollars.
Assessor	two thousand five hundred dollars.
Clerk and Recorder	two thousand dollars.
Clerk of District Court	two thousand dollars.
Probate Judge	two thousand dollars.
Superintendent of schools	one thousand dollars.

GALLATIN COUNTY.

Treasurer	two thousand five hundred dollars.
Sheriff	two thousand five hundred dollars.
Assessor	two thousand five hundred dollars.
Clerk and Recorder	two thousand five hundred dollars.
Clerk of District Court	one thousand two hundred dollars.
Probate Judge	one thousand eight hundred dollars.
Superintendent of schools	one thousand dollars.

JEFFERSON COUNTY.

Treasurer	one thousand five hundred dollars.
Sheriff	two thousand dollars.

Assessor	one thousand five hundred dollars.
Clerk and Recorder	one thousand five hundred dollars.
Deputy Clerk of District Court	six hundred dollars.
Probate Judge	one thousand two hundred dollars.
Superintendent of schools	seven hundred and fifty dollars.

LEWIS AND CLARKE COUNTY.

Treasurer	two thousand five hundred dollars.
Sheriff	three thousand dollars.
Assessor	two thousand five hundred dollars.
Clerk and Recorder	two thousand dollars.
Clerk of District Court	two thousand dollars.
Probate Judge	two thousand dollars.
Superintendent of schools	one thousand dollars.

MADISON COUNTY.

Treasurer	two thousand two hundred dollars.
Sheriff	two thousand dollars.
Assessor	one thousand five hundred dollars.
Clerk and Recorder	two thousand dollars.
Clerk of District Court	one thousand five hundred dollars.
Probate Judge	one thousand two hundred dollars.
Superintendent of schools	one thousand dollars.

MEAGHER COUNTY.

Treasurer	two thousand dollars.
Sheriff	two thousand dollars.
Assessor	one thousand five hundred dollars.
Clerk and Recorder	two thousand dollars.
Deputy Clerk of District Court	one thousand dollars.
Probate Judge	one thousand dollars.
Superintendent of schools	eight hundred dollars.

MISSOULA COUNTTY.

Treasurer	two thousand dollars.
Sheriff	two thousand two hundred dollars.
Assessor	one thousand five hundred dollars.
Clerk and Recorder	one thousand eight hundred dollars.
Deputy Clerk of District Court	nine hundred dollars.
Probate Judge	twelve hundred dollars.
Superintendent of schools	one thousand dollars.

SILVER BOW COUNTY.

Treasurer	two thousand five hundred dollars.
Sheriff	three thousand dollars.
Assessor	two thousand five hundred dollars.

Clerk and Recorder.............................two thousand five hundred dollars.
Deputy Clerk of District Court.two thousand dollars.
Probate Judge................two thousand dollars.
Superintendent of schools......one thousand dollars.

YELLOWSTONE COUNTY.

Treasurer........two thousand five hundred dollars.
Sheriff..two thousand seven hundred and fifty dollars.
Assessor.....................two thousand dollars.
Clerk and Recorder..............................two thousand five hundred dollars.
Deputy Clerk of District Court...............................twelve hundred dollars.
Probate Judge.....one thousand five hundred dollars.
Superintendent of schools......one thousand dollars.

Salaries payable quarterly.

which sums shall be paid to them quarterly, out of the contingent fund in their respective county treasuries, upon the warrant of the county commissioners, it being the true intent and meaning of this act to limit the maximum annual compensation, from every source, of the officers named in section 931, of this chapter, to the sums named in this section.

Officers to pay over receipts quarterly.

SEC. 936. That each of the said officers named in section 931 of this chapter, shall, at the end of each quarter, pay into their respective county treasuries, for the use of their counties, all fees, costs, penalties, percentages, allowances and perquisites of every sort collected by them during said quarter, to the credit of the contingent fund of the county.

Duty of sheriff.

SEC. 937. It shall be the duty of the sheriff, at the expiration of his official term of office, or within ten days thereafter, to pay over to his successor in office, all moneys that may be in his hands under any execution, or order of sale, or other legal process, of whatever kind, or the proceeds arising from any sale of real or personal property by him previously made, and where he holds the same awaiting the order of the court for confirmation of sale or distribution of proceeds.

Penalty for failure to pay over

SEC. 938. In case any officer named in this act shall fail to pay over into the county treasury any money found due from him upon his settlement with the county commissioners under this act for the period of thirty days after the same shall have been ascertained and found by them to be due, and notice given him; or, if any of said officers shall, with intent to violate this act, fail to furnish the statements and reports herein required, at the time and in the manner herein specified; or, if the sheriff shall fail to pay over moneys to his successor in office, as provided in section 936 of this chapter; or, if any of said officers shall willfully make any such report false in any material matter, knowing the same to be so; or, if any of said officers shall willfully violate any of the provisions of this act,—he shall, upon conviction upon indictment in the district court of the proper county, be adjudged guilty of misconduct in office, and be immediately removed therefrom, and, in addition, forfeit all compensation to which he would otherwise be entitled, and be condemned to pay a fine for the use of the county of not less than five hundred dollars nor more than two thousand dollars, for the payment of which forfeiture and fine, as well as any amount otherwise due from him in his official capacity, his sureties shall also be liable upon their bond, to be recovered in a civil action, in the name of the territory of Montana, for the use of the county in which he was an officer.

Liability of bondsmen.

SEC. 939. The official bond required by law, and hereafter taken from any officer named in this act, shall be deemed and held to make the parties to the same liable for any violation on the part of the officer for whom they are sureties of any of the provisions thereof, and for the faithful performance of all the duties hereby required.

Form of receipt and oath.

SEC. 940. Before the county commissioners shall issue a warrant upon the county treasurer to any clerk, deputy, or other assistant, for his compensation or salary, as prescribed in section 933 of this chapter, said clerk, deputy, or assistant, shall sign a receipt, and verify the same by oath or affirmation attached, which receipt and oath or affirmation shall be in the following form:

No .....

Received of the (here recite the county), by (here state name of party receiving salary or compensation), ... dollars, in full for services as (here insert services), for .... ending .... A. D. 18....

(Name of party receiving same).

I hereby swear (or affirm) that I have rendered the services as herein stated, and that I have received the full sum set forth in the above receipt for my own use and benefit, and that I have not paid, deposited, or assigned, nor contracted to pay, deposit, or assign, any part of such compensation for the use of any other person, nor in any way, directly or indirectly, paid or given, nor contracted to pay or give, any reward or compensation for any office, or the emoluments thereof.

..............(Name of party).

Sworn to and subscribed before me, this.......... day of............18....

............(Signature of officer).

And said receipt and oath or affirmation shall be preserved and filed by the county clerk.

Reasonable expenses allowed sheriff, deputy, etc

SEC. 941. Every sheriff, deputy or other person, appointed by the court to serve or execute any writ or other process issued therefrom, shall serve or execute the same, and shall receive therefor his or their actual, reasonable and necessary expenses while in the performance of such duty, and such actual expenses shall be ascertained by the county commissioners, and paid out of the treasury of the proper county; but before the same shall be paid, the sheriff, deputy or other person serving or executing the writ or other process, shall make out a sworn statement in detail of the distance traveled, the name of the person or persons served with such writ or other process and the amount of money actually paid as expenses, with vouchers for railroad fare and other transportation, and if the county commissioners, after an examination of the same, shall find that the expenses are reasonable and the amount stated was actually paid, they may order the same, or any part thereof, to be paid out of the contingent fund of their respective counties.

All costs, fees, percentages, allowances and penalties, and other perquisites, of whatever kind, belonging to the counties, under the provisions of this chapter, remaining unpaid at the end of the official term of office of any officer named in this act, shall in nowise belong to or be the property of any such officer, but shall be collected by his successor in office, and paid into the treasury of the proper county.

Fees of justices of the peace

SEC. 942. Justices of the peace shall be allowed a fee of one dollar at the commencement of any suit, civil or criminal, and three dollars additional for trying any case, and not more than six dollars for trying any case, and this shall be in full for all services required by law in the progress of any suit, including final judgment. For all transcripts, on appeal or otherwise, twenty cents per folio of one hundred words or fraction thereof.

Fees of constables.

SEC. 943. The fees of constables shall be the same as those allowed sheriffs for similar services, but they shall in no case charge or be allowed any fee for attendance on the court for the entry of any warrant or subpœna, separate or apart from the fee allowed for a return, nor for the discharge of any prisoner, nor shall he be allowed any mileage for any distance traveled less than one mile.

Mileage

SEC. 944. County officers, jurors, witnesses and all other parties that may be entitled to mileage from the several counties in the territory, shall be entitled to collect mileage at the rate of fifteen cents per mile for the distance actually traveled, and no more.

NOTE.—Sections 931 to 944, both inclusive, from act of March 12, 1885

Salaries of certain officers fixed

SEC. 945. That the following named officers of any county of this territory, and the clerks and deputy clerks of the district court, when not otherwise provided by law, shall receive, as annual compensation for their services, the following salaries, to-wit: County treasurer, two thousand dollars; sheriff, two thousand dollars; county clerk and recorder, two thousand dollars; probate judge, one thousand dollars; assessor, fifteen hundred dollars; superintendent of common schools, eight hundred dollars; deputy clerk of the district court, ten hundred dollars; clerk of the district court, two thousand dollars; which sums shall be paid quarterly out of the contingent fund in the treasury of any county legally liable therefor, upon the warrant of the county commissioners.

NOTE—Section 945 is section 1, and comprises all of "An act defining the compensation for county and other officers," approved February 25, 1887

Salaries of clerks of courts

SEC. 946. That the clerks of the several judicial districts of the Territory of Montana, shall be entitled to receive as compensation for their services as such clerks, the following yearly salaries, to-wit; In the county of Gallatin, one thousand dollars; in the county of Deer Lodge, one thousand dollars; in the county of Lewis and Clarke, one thousand dollars: in the county of Custer, one thousand dollars; one-fourth thereof payable quarterly out of the contingent fund of the said county, by a warrant drawn on such fund, and payable in their usual course, as other warrants thereon are drawn and paid, and which salary shall be in full compensation for all services and charges against said counties as such clerks in said counties, in all criminal causes, and in all causes in which any county or the Territory of Montana, or any officer thereof as such may be a party, or in any way interested or liable for costs.

Salaries of deputy clerks.

SEC. 947. When such clerks may have a deputy in any other counties hereinafter named, such deputies shall be entitled to receive as compensation for their services as deputy clerks of said courts in said counties, the following salaries, to-wit: In the county of Missoula, six hundred dollars; in the county of Beaverhead, six hundred dollars; in the county of Jefferson, six hundred dollars; in the county of Madison, six hundred dollars, in the county of Dawson, six hundred dollars; in the county of Meagher, six hundred dollars; in the county of Choteau, six hundred dollars in the county of Fergus, six hundred dollars; in the county of Silver Bow, ten hundred dollars; in the county of Yellowstone, six hundred dollars; in the county of Park, six hundred dollars; to be paid quarterly by warrants drawn on the contingent fund of said counties and paid as other warrants thereon. and such salary shall be for the use and benefit of such deputies. And where such clerks shall have no deputy residing in any of said counties last named, such salaries shall not be paid; and nothing in this act shall be construed as to authorize any compensation for any deputy in said counties of Deer Lodge, Gallatin, Lewis and Clarke or Custer. And it is provided that said salaries shall be in full payment for all services as clerks in said counties in all civil and criminal causes in which any county, or the territory or officer thereof shall be a party or in any way liable for costs.

Fees of clerks and deputies

SEC. 948. In addition to the salaries of said clerks and deputies mentioned in the foregoing sections, they shall be entitled to receive:

For verification to affidavit and seal	$0 50
For taking depositions, per folio	15
For taking acknowledgments to conveyances	50
For declaration of intention to become a citizen	2 00
For final naturalization papers	3 00
For transcript on appeal, for transcript of judgments or certified copies of other papers, per folio	10
For commencing actions in civil cases, including the issuance of summons, writ of attachment, writs of injunction, or other writs, unless the same be presented in *forma pauperis*	5 00
and no more if dismissed or discontinued.	

For entry of final judgment in favor of plaintiff.	2 50
Upon the appearance of the defendent or defendants in each civil action	2 50
Upon entry of final judgment in favor of defendant.........	5 00

and the items of compensation in this section specified shall be the only charges or compensation that the clerk of a district court or any deputy shall collect or receive in civil action in any district court of this territory.

Salaries of county clerks and recorders

SEC. 949. That the several county clerks and recorders of the counties of this territory shall receive for all services required of them by law to be performed for any county, or the Territory of Montana, or in which any county or the Territory of Montana is a party, or in any way liable or responsible for costs or fees to said clerks and recorders, the following yearly salary, to-wit: In the county of Deer Lodge, ten hundred dollars; in the county of Lewis and Clarke, ten hundred dollars; in the county of Madison, eight hundred dollars; in the county of Beaverhead, eight hundred dollars; in the county of Missoula, eight hundred dollars; in the county of Jefferson, eight hundred dollars; in the coumty of Dawson, eight hundred dollars; in the county of Gallatin, eight hundred dollars; in the county of Meagher, eight hundred dollars; in the county of Choteau, eight hundred dollars; in the county of Custer, eight hundred dollars; in the county of Fergus, eight hundred dollars; in the county of Silver Bow, ten hundred dollars; in the county of Yellowstone, eight hundred dollars; in the county of Park, eight hundred dollars.

Payable quarterly.

SEC. 950. Such salary shall be paid one-fourth thereof quarterly by warrant drawn on the contingent fund of the proper county, and payable as other warrants on such fund are paid, and which salary shall be the only compensation said clerks and recorders shall receive for all services required by law of them to be performed for any county or this territory, or for which any county or this territory is liable or responsible; nor shall any county or this territory pay to said clerks and recorders any other compensation than herein provided.

Fees of clerks and recorders.

SEC. 951. In addition to the salary of said clerks and recorders mentioned in the foregoing section, they shall be entitled to receive, for filing and recording each instrument of writing allowed by law to be recorded, for first folio, thirty cents; for each additional folio, fifteen cents; for each entry in index, ten cents;

for each certificate of record of title, fifty cents; for recording marriage certificate, one dollar; acknowledgment, certificate and seal, fifty cents; for copies of record, per folio, fifteen cents; abstract of title, first conveyance, fifty cents; for each subsequent conveyance, five cents; abstracts from original entries, each, fifty cents; for each search of records, twenty-five cents; record of quartz claims, two dollars; for cancelling or releasing any mortgage, attachment, or other lien, twenty-five cents; for filing each affidavit of brands of cattle slaughtered, twenty-five cents; for recording town plats, for each two hundred lots or less, ten dollars; for each additional lot, five cents; for filing and indexing chattel mortgages, lien attachment or other paper required by law to be filed and indexed, one dollar; for filing and recording each affidavit of lode representation, one dollar; for filing and indexing each annual statement of corporations, one dollar; for filing any paper not herein provided for, twenty-five cents.

Salaries of superintendent of schools.

SEC. 952. The county superintendents of common schools in the various counties of the territory shall receive the following annual salaries, to-wit: In the county of Beaverhead, five hundred dollars; in the county of Choteau, five hundred dollars; in the county of Custer, five hundred dollars; in the county of Dawson, three hundred dollars; in the county of Deer Lodge, six hundred dollars; in the county of Gallatin, six hundred dollars; in the county of Jefferson, five hundred dollars; in the county of Lewis and Clarke, seven hundred and fifty dollars; in the county of Madison, six hundred dollars; in the county of Meagher, five hundred dollars; in the county of Fergus, four hundred dollars; in the county of Missoula, six hundred dollars; in the county of Silver Bow, seven hundred and fifty dollars; in the county of Yellowstone, four hundred dollars; in the county of Park, four hundred dollars. And in addition thereto each superintendent shall be allowed his actual traveling expenses not exceeding five dollars per district, to be allowed on proper verified account.

The salary and traveling expenses herein provided for, shall be paid quarterly by warrant drawn on the contingent fund of the county,

Salaries of county treasurers.

SEC. 953. The county treasurers of the several counties shall receive for all services required of them by law to be performed for any county, or the Territory of Montana, or in which any county or the

Territory of Montana is a party, or in any way liable or responsible for costs or fees to said treasurers, the following yearly salaries to-wit:

In the county of Deer Lodge, seventeen hundred dollars.

In the county of Lewis and Clarke, two thousand dollars.

In the county of Madison, fifteen hundred dollars.

In the county of Beaverhead, fifteen hundred dollars.

In the county of Missoula, fifteen hundred dollars.

In the county of Jefferson, fifteen hundred dollars.

In the county of Gallatin, fifteen hundred dollars.

In the county of Meagher, fifteen hundred dollars.

In the county of Choteau, fifteen hundred dollars.

In the county of Custer, sixteen hundred dollars.

In the county of Fergus, twelve hundred dollars.

In the county of Yellowstone, twelve hundred dollars.

In the county of Park, twelve hundred dollars.

In the county of Silver Bow, twenty-five hundred dollars.

In the county of Dawson, twelve hundred dollars.

Provided, That in addition to the salaries herein provided, said county treasurer shall receive a per centage of all warrants collected for licenses issued, as follows: Upon the first five thousand dollars, or fraction thereof, five per centum; on the second five thousand dollars, or fraction thereof, three per centum; on the third five thousand dollars, or fraction thereof, two per centum; on the fourth five thousand dollars, or fraction thereof, one and one-half per centum; and upon all amounts of licenses collected, exceeding twenty thousand dollars, one per centum.

Payable quarterly

SEC. 954. The treasurer's salary shall be paid one-fourth quarterly by warrant drawn on the contingent fund of the proper county, and payable as other warrants on said fund are paid. The per centage due said treasurers upon licenses collected shall be ascertained by the board of county commissioners and paid quarterly in the same maner as provided for the payment of salaries.

Compensation of assessors

SEC. 955. That the assessors of each county shall receive from their respective counties a per centage of the assessed valuation returned by them, subject to all reductions made by the board of equalization, to be computed as follows: On the first three million dollars, or fraction thereof, assessed and returned, one half of one mill on each dollar; on all amounts assessed and returned in excess of three million dollars one-fourth of one mill or each dollar.

Fees of sheriffs

SEC. 956. It shall be lawful for sheriffs to demand and receive the following fees: For transporting prisoners and insane persons, per mile, including diet and all expenses, twenty-five cents; for summoning jurors, each, thirty cents; for serving summons, including copy of complaint and summons on each party, fifty cents; for making copies of summonses and other writs, per folio, twenty cents; for serving subpœnas and copy, each witness, thirty cents; for advertising property for sale, one dollar; for every mile actually and necessarily traveled, fifteen cents; for serving and returning *scire-facias*, seventy-five cents; for committing prisoner to jail, thirty cents; attending before any judge with prisoner on writ of *habeas corpus*, seventy-five cents; for serving writ of possession, with aid of *posse comitatus*, three dollars; without such aid, one dollar and fifty cents: for attending district court, per day, two dollars and fifty cents; for attending probate court, by order of court, per day, one dollar and fifty cents; for serving execution or attachment, seventy-five cents; for executing and acknowledging deed of sale of real estate, two dollars; for making certificate of sale, previous to execution of deed, seventy-five cents: for taking replevin forthcoming, or other bond, seventy-five cents; for executing capias or warrant in criminal cases, seventy-five cents; for serving declaration in ejectment and proper return for each defendant, seventy-five cents; for commissions on money collected without sale, on all sums under five hundred dollars, one and one-half per cent; on all sums between five hundred and one thousand dollars, one per cent., and on all sums over one thousand dollars, three-quarters of one per cent.; for commissions on money collected by sale of sheriff on any sum under one thousand dollars, two per cent.; on all sums between one thousand and five thousand dollars, one per cent.; on all sums over five thousand, one-eighth of one per cent. That the sheriff of each county in this territory shall be allowed, in addition to the said fees, a salary of five hundred dollars per annum, payable quarterly, by warrant drawn on the contingent fund of their respective counties: *Provided*, that nothing in this act shall be held to apply to the compensation received by the sheriff for board of prisoners or the transportation of convicts sentenced to confinement in the penitentiary.

Fees of justice of the peace.

SEC. 957. Justices of the peace shall be allowed a fee of one dollar at the commencement of any suit, civil or criminal, and three dollars per diem additional for trying or preliminary hearing in any case, and not more than two days per diem in any case, and this shall be in full for all services required by law in the progress of any suit, including final judgment. For all transcripts on appeal or otherwise, fifteen cents per folio of one hundred words, or fraction thereof.

Fees of probate judge

SEC. 958. The judge of the probate court shall receive the following fees in probate matters: for appointing executors, administrators, guardians or trustees, one dollar; for granting letters testamentary or of admistration, affixing seal thereto and recording the same, one dollar; administering oath to any case where a jurat and seal are necessary, twenty-five cents; taking proof of a will or codicil thereto, one dollar; recording any will, codicil or other paper, not herein otherwise provided for, per folio, fifteen cents; indorsing certificate of probate on any will, codicil, or other paper, ten cents; examining and approving each inventory, sale, bill or account current, filed by executor or administrator, fifty cents; entering settlement of executors or administrators on order book, fifty cents: each copy of the settlement of executors or administrators, with certificate and seal, one dollar; for each decree limiting time for exhibiting claims of creditors, fifty cents; for each order of distribution, fifty cents; for transcript of records, including certificate and seal, per folio, fifteen cents; making order for publication, twenty-five cents; entering allowance of appeal, twenty-five cents; issuing each citation or summons, with seal, fifty cents; issuing subpœna, first witness, twenty-five cents, and ten cents for each additional name inserted, and not more than two subpœnas in any one case; entering any decree or judgment, fifty cents; filing any paper belonging to estate or otherwise, ten cents; hearing application for guardianship or trusteeship and issuing letters therefor, one dollar; taking and approving bond of guardian, trustee, or in any other case where required by law, fifty cents; hearing application to revoke letters testamentary and deciding the same, one dollar; swearing a jury, twenty-five cents; taking acknowledgments of any instrument in writing, where there are no more than two parties, fifty cents; three or more parties, seventy-five cents; issuing venire, twenty-five cents; taking and entering verdict, twenty-five cents; allowing or disallowing demand against an estate, twenty-five cents; granting and entering a continuance, fifteen cents; performing marriage ceremony, three dollars. In all civil and criminal actions brought before the probate court, the judge thereof shall be entitled to demand and receive the same fees and per diem and be subject to the same limitations therein as is provided for justices of the peace in this act.

Fees of constables and marshals.

SEC. 959. The fees of constables and town and city marshals shall be the same as those allowed sheriffs for similar services, but they shall in no case charge or be allowed any fee for attendance on court for the entry of any warrant or subpœna separate or apart from the fee allowed for a return, nor for the discharge of any prisoner, nor mileage for serving subpœnas or warrants in the presence of the court.

Statement of fees.

SEC. 960. All officers provided for in this act shall make out a sworn statement quarterly, which shall contain a full and complete statement of all fees and emoluments of whatever character received by them during each quarter, said statement to be filed with the board of county commissioners. A failure to comply with the provisions of this section shall be deemed a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding one hundred dollars.

No other compensation

SEC. 961. That the fees and salaries in this act provided shall be all the compensation by law allowed such officers, for all services which they are required to or by law can perform as such officers. Any such officers who shall receive any fee or reward or salary not specifically provided for herein, shall be liable to the county, territory or persons paying the same for ten times the sum so paid to such officers, to be recovered by civil action, and shall be deemed guilty of a misdemeanor, and on conviction shall be fined in any sum not less than one hundred nor more than five hundred dollars, and shall be imprisoned in the county jail for a term of not less than thirty nor more than ninety days.

Statement by sheriff.

SEC. 962. The sheriff of the several counties in this territory shall, in all cases where any county, or the territory shall be liable for fees for the services of any process, make a detailed statement showing the distance and route actually traveled, the place of starting and in what case or cases writs were issued involving such travel, and how many writs were served or mileage charged upon at such time, and upon failure so to exhibit such statement duly verified, the payment for the same shall be refused.

Repeal.

SEC. 963. An act entitled "An act limiting the compensation of certain officers herein named," approved March 12th, 1885, and all acts or parts of acts in conflict with the provisions of this act, be, and the same are hereby repealed.

SEC. 964. This act shall take effect and be in force from and after the third Monday in December, A. D. 1888, except as to the office of county treasurer, but as to the office of county treasurer this act shall take effect and be in force from and after the first Monday in March 1889.

Takes effect, when

NOTE —Sections 946 to 964, both inclusive, are in their order respectively sections 1 to 19, both inclusive, and comprise all of "An act concerning the fees and compensation of certain district and county officers," approved March 10, 1887"

CHAPTER LIII.

ACCOUNTS AND SETTLEMENTS OF COUNTY OFFICERS.

Sec. 965. *County Commissioners may require county officers to file their accounts monthly.*
Sec. 966. *County commissioners may audit accounts monthly.*
Sec. 967. *Collectors, sheriffs, marshals, constables and others to settle with commissioners.*
Sec. 968. *Upon refusal, the commissioners must adjust their accounts.*
Sec. 969. *Commissioners may refuse to allow delinquents commisssion.*
Sec. 970. *If balance due not paid in ten days, ten per cent added.*
Sec. 971. *Procedure against delinquent's bonds.*
Sec. 972. *Discretion of commissioners.*
Sec. 973. *County clerk custodian of records. etc.*
Sec. 974. *Duties of clerk of the board of county commissioners.*
Sec. 975. *Clerks of courts to keep just accounts of fines, etc.*
Sec. 976. *To certify fines, etc., to county commissioners.*
Sec. 977. *Justice of the peace to account.*

SEC. 965. The board of county commissioners of the respective counties may, in their discretion, require all county, precinct and district officers, having claims or demands against the county, to file said accounts, properly itemized, with the county clerk, on or before the first Monday of each month. Any officer neglecting to file his account as above provided, after receiving notice from the commissioners to file the

14th ses p. 62

Officers may be required to file accounts monthly same, shall forfeit all claim or demand against the county for any services rendered, and which should have been included or embraced in an account thus directed to be filed.

14th ses. p 62.

Adjustment of accounts.

SEC. 966. The board of commissioners of the respective counties may, in their discretion, audit and adjust the accounts of all county, district and precinct officers, filed in pursuance of the preceding section, at any regular or special meeting of the board after said accounts shall be filed.

NOTE.—Sections 965 and 966. act of March 12, 1885.

Officers chargeable with moneys to render monthly acounts

SEC. 967. Collectors, sheriffs, marshals, constables and persons chargeable with moneys belonging to any county, shall render their accounts to, and settle with, the board of county commissioners, at each stated term thereof, pay into the county treasury any balance which may be due the county, take duplicate receipts therefor, and deposit one of the same with the clerk of the board of county commissioners within five days thereafter.

Adjustment if officer fails to render account.

SEC. 968. If any person thus chargeable shall neglect or refuse to render true accounts, or settle as aforesaid, the board of county commissioners shall adjust the accounts of such delinquent according to the best information they can obtain, and ascertain the balance due to the county.

Commission refused to failing officer.

SEC. 969. In such case the board of county commissioners may refuse to allow any commission to such delinquent, and he shall moreover, without delay, pay into the county treasury the balance found to be due as aforesaid.

Penalty for delinquency.

SEC. 970. If he shall not pay the amount thereof, and produce to the clerk of the board of county commissioners the treasurer's receipt therefor, within ten days after such balance is ascertained, the clerk shall charge such delinquent ten per cent. on the amount then due.

Suit against delinquent.

SEC. 971. Unless the delinquent appear on or before the first day of the next session of the board of county commissioners, and show good cause for setting aside such settlement, it shall be the duty of the board of county commissioners to give to the district attorney of the district in which such county is situated, a statement of such delinquent account; and it shall thereupon be the duty of such district attorney to proceed to collect such amount from such delinquent and his bondsmen.

SEC. 972. If good cause be shown for setting aside such settlement, the board of county commissioners may re-examine the accounts, settle and adjust the same according to law, and, in their discretion, the the penalties impose.

Re-examination of accounts

SEC. 973. The clerk of the board of county commissioners of the several counties in this territory shall be the sole custodian of all the books, papers, and records connected with his office, and shall be alone responsible for the same.

Clerk is custodian of records, etc

SEC. 974. It shall be the duty of the clerk of the board of county commissioners:

Duties of clerks.

First, to keep regular accounts between the treasurer and the county, charging him therein with all moneys paid into the treasury, and crediting him with the money he may have disbursed between the periods of his respective settlements with the board of county commissioners.

Second. To adjust accounts between the county and all persons, bodies politic and corporate, chargeable with moneys payable into the county treasury, or who may become entitled to receive moneys therefrom.

Third. To file and preserve in his office all accounts, vouchers, and other papers pertaining to the settlement of any account to which the county shall be a party, copies whereof, certified under the hand and seal of the clerk, shall be entitled to be read in evidence in all courts of law and elsewhere.

Fourth. To issue warrants on the treasury for all moneys ordered to be paid by the board of county commissioners at every regular term, balance and exhibit the accounts kept by him as often as required by the board of county commissioners, and keep his books and papers at all times ready for the inspection of the board of county commissioners, or any member thereof.

SEC. 975. It shall be the duty of all clerks of courts of record to keep just accounts of all fines, penalties, forfeitures and judgments rendered, imposed or accruing in favor of any county, ready at all times for the inspection of the judge of their respective courts.

Same

SEC. 976. The clerks of such courts shall, within ten days after the end of each term of the respective courts of which they are the clerks, certify to the board of county commissioners of said counties the amount of fines imposed and forfeitures incurred at said term, and against whom assessed, and by whom

Same

incurred, and forthwith deposit said certificate with the clerks of the board of county commissioners of their respective counties, and if any clerk shall fail to comply with this section he shall forfeit and pay to the county not less than ten nor more than one hundred dollars, to be recovered by civil action.

Justice to make list of fines.

Sec. 977. It shall be the duty of each justice of the peace at each meeting of the board of county commissioners, when not otherwise provided by law, to make out a list of all fines by him imposed to the use of the county, stating therein the name of the officer who has or ought to have collected the same, which he shall certify and deliver to the clerk of the board of county commissioners, who shall charge the same accordingly.

NOTE.—Act of January 8, 1872.

CHAPTER LIV.

CHANGING COUNTY SEATS.

Sec. 978. Petition to change county seat.
Sec. 979. Publishing and posting notice.
Sec. 980. Style of ballot and manner of election.

13th ses. p. 38.

Petition and notice for election to change county seat.

SEC. 978. It shall be the duty of the county commissioners of any county of this territory, whenever a petition is presented to them signed by a majority of the legal voters and taxpayers of such county, praying that the county seat be changed to any place named in such petition, to give notice to the people of their county, sixty days at least before the next general election to be held in such county, that the change named in such petition will be submitted to the voters of such county at such election: *Provided*, That the term "taxpayers" used in this section shall be deemed to mean "*ad valorem* taxpayers," and that for the purpose of testing the sufficiency of any petition which may be presented to the county commissioners as provided in this section, the county commissioners shall compare such petition with the poll books in the county clerk's office constituting the returns of the last election held in their county, for the purpose of ascertaining whether such petition bears the names of a majority of the voters listed therein; and they shall make a similar comparison of the names signed to the petition with those appearing upon the listed assessment roll of the county for the purpose of ascertaining whether the petition bears the names of a majority of the *ad valorem* tax-payers as listed in said assessment roll; and if such petition then shows that it has not been signed by a majority of the legal voters of the county who are *ad valorem* tax-payers thereof, it shall be deemed insufficient, and the question of removal of the county seat shall not be submitted.

NOTE—Section 978, act of February 23d, 1883

Notice to be posted and published.

SEC. 979. The notice required in section 978 of this chapter, shall be published in some newspaper in such county thirty days previous to such election (if any such paper be published therein), but if no such paper be published in the county, then by posting written notices in ten public places in such county; one on the door of each postoffice in such county, and one at the place where the polls are opened, in each precinct in such county.

Ballots.

SEC. 980. At such election, the ballots shall have written or printed theron, "county seat;" and those voting for a change of such county seat shall have written or printed under such words the name of the place named in such petition, and those opposed to such change shall have written or printed thereunder the name of the place where such county seat may then be, and the place receiving the highest number of votes shall be the county seat of such county.

NOTE—Act January 12th, 1872, except when othsiwise specially noted

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CHAPTER LV.

DECEASED PERSONS, ACTION FOR INJURIES TO.

Sec. 981. Party or corporation liable for injuries causing death.

Sec. 982. Personal representative of deceased to sue; measure of damages.

When party or corporation liable for injuries causing death.

SEC. 981. Whenever the death of a person shall be caused by a wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or the corporation or company which would have been liable if death had not ensued, shall be liable for an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

Who may sue.

SEC. 982. Every such action shall be brought by, and in the name of, the personal representatives of such deceased persons, and the amount recovered in every such action shall be for the exclusive benefit of the widow and next of kin of such deceased person, and shall be distributed to such widow and next of kin in the proportion provided by law in relation to the distribution of personal property left by persons dying intestate; and in every such action the jury may give such damages, not exceeding twenty thousand dollars, as they shall deem a fair and just compensation, with reference to the pecuniary injuries resulting from such death, to the wife and next of kin of such deceased person; *Provided*, That every such action shall be commenced within three years after the death of such person.

Measure of damages.

Limitation.

NOTE—Act January 8th, 1872

CHAPTER LVI.

DAMS AND RESERVOIRS.

Sec. 983. Dam or reservoir to be substantially constructed.
Sec. 984. Hereafter not to be constructed except in a thorough and substantial manner.
Sec. 985. Jury appointed to examine dam or reservoir.
Sec. 986. Examination and verdict of such jurors if dam is secure.
Sec. 987. Further duties of such jurors.
Sec. 988. Proceedings if dam is insecure.
Sec. 989. Formation of jury to try issues.
Sec. 990. Appeals and provisional writs pending appeal.
Sec. 991. Fees and expenses of jurors.
Sec. 992. Experts to supervise construction of dams and reservoirs.
Sec. 993. Punishment.

Dam or reservoir to be substantially constructed

SEC. 983. No person shall hereafter fill or procure to be filled with water any dam or reservoir which is not so thoroughly and substantially constructed as that it will safely and securely hold the waters so to be turned therein, if upon the stream upon which said dam or reservoir is situate, and below the same, there are persons living whose lives are or may be endangered by the breaking of such dam or reservoir, or if upon said stream there is valuable property which may be damaged or destroyed by the breaking of such dam or reservoir and the escape of the waters therefrom.

Same.

SEC. 984. No person shall hereafter construct or cause to be constructed on such stream any dam or reservoir to accumulate the waters thereof, except in a thorough, secure and substantial manner.

Jury appointed to examine dam, etc.

SEC. 985. Upon complaint made, an oath before any probate judge of any county in this territory, that any person or persons are filling, or are proposing or threatening to fill such dam or reservoir, as is mentioned in section 983 of this chapter, or have filled or gathered water in such reservoir or dam, and that life and property is or will be thereby endangered, it shall be the duty of such probate judge forthwith to appoint three discreet and proper persons of the county in which such dam or reservoir may be situate, competent to serve as jurors in such county, one of whom, if practicable, shall be a mining or civil engineer, and to administer to each of them an oath that he will diligently proceed to and thoroughly examine the said dam or reservoir, and determine as to its security, to the best of his ability, without fear or favor, and whether life or property is or will be endangered thereby by the breaking thereof and the escape of waters therefrom.

Verdict of jury.

SEC. 986. Upon taking and subscribing said oath, it shall be the duty of such persons to proceed together to such stream, dam or reservoir, and to make a thorough examination thereof, and if upon such examination the said persons shall find that along said stream there are persons residing whose lives may be endangered, or that there is property thereon below said dam or reservoir which may be endangered, damaged or destroyed, they shall determine whether the said dam or reservoir is or is not secure against the pressure of the water confined therein, or the water proposed to be confined therein, and also secure against rains and freshets which may occur, and if they find that the same is secure against the occurrence of the casualties mentioned, or any of them, they shall make a verdict in writing to that effect, over their hands, to the probate judge who appoints them, which he shall enter of record as a proceeding in his court.

If dam insecure water may be drawn out.

SEC. 987. If, upon such examination as to the safety of such reservoir, they, or a majority of them, shall deem such reservoir insufficient and insecure, they shall further inquire whether the danger to be apprehended is imminent or no, and if they, or a majority of them, shall be of the opinion that such danger is imminent, and that destruction of life or property will result from delay, it shall be their duty forthwith, in such manner as to them shall seem best, to draw from such reservoirs the waters therein, or so much thereof, as will insure the safety of all persons and property below the same on the line of said stream, and they shall make return of their action to such probate judge; and in the discharge of such duties the persons so acting shall be deemed peace officers of the territory, engaged, upon their discretion, in the lawful protection of life and property, and in preventing apprehended violence thereto.

Owner may be compelled to withdraw water from dam.

SEC. 988. If, upon such examination, they, or a majority of them, shall deem such dam or reservoir insecure and insufficient, but that the danger therefrom is not immediate or imminent, they shall so state in writing to such probate judge, who shall thereupon cause a copy of said finding of said persons to be served on the owner or owners, or person or persons in charge thereof, with a notice requiring him or them to proceed forthwith to make the same secure, or to draw the water therefrom without delay; and unless such person or persons shall comply with such notice in the shortest practicable time, or unless the said person or persons, upon a hearing before said probate judge, upon notice to the complainant thereof, shall show that the said dam or reservor is secure, or that no property or life would be endangered by its giving way, it shall be the duty of said probate judge to issue his writ commanding the sheriff to draw from said dam or reservoir the waters thereof.

Challenge to jurors, etc.

SEC. 989. Upon such trial it shall be the duty of the probate judge to prepare a list from among the persons of the county competent to serve as jurors, of the names of twelve persons, who, in his judgment, are best qualified to judge of the sufficiency of any dam or reservoir, who may be interrogated as to causes of challenge for cause by any person interested, and if any shall not be indifferent as between the parties, or other cause of challenge for cause shall exist, and said person shall be challenged, the probate judge shall excuse him and summon others until twelve discreet persons remain against whom no challenge for cause exists, and the complainant and others, if any prosecuting with him, as prosecutors, and the owner, or persons complained of, or in charge of, or owning said dam or reservoir, as defendants, shall alternately strike from said list until it is reduced to six, who shall compose the jury to try the issue or issues named in section 987 of this chapter, or the parties aforesaid, if they can agree, may select the jury therefor.

Appeal.

Proceedings pending appeal.

SEC. 990. The person or persons, corporation or company, owning or using said reservoir or dam and the waters therein, may appeal from any decision of the probate judge and the verdict of the persons appointed by such probate judge, to the district court, as appeals are taken in other cases, upon giving to any person or persons owning property on said stream below said dam or reservoir which may be destroyed by the bursting thereof, and who shall have appeared and claimed such security in such sum or sums as the probate judge may determine, security against loss or damage resulting from the bursting of said dam or reservoir, which said appeal shall be tried by a jury who may hear testimony as to the questions involved, and shall also personally inspect the dam, reservoir or stream, and such appeal shall stay all proceedings as to said dam or reservoir, and the waters therein, except when it shall appear that the danger therefrom is imminent as aforesaid, in which case it shall be the duty of the said probate judge, while the court over which he presides has jurisdiction in the case, and of the judge of the district court after the case is appealed to that court, by proper writs of prohibition, mandamus, or assistance, to be issued provisionally, to protect life and property against any threatened assault upon either, by the careless or insecure accumulation of waters by any person or persons whomsoever in the manner aforesaid; and if any person or persons shall resist any officer in the execution of any writ so issued by the said probate judge, or justice of the district court, or shall fail to assist such officer in the exection of such writ, when thereto requested by him, the person or persons being thereof convicted shall be punished as for resisting an officer, as now provided by law.

Costs.

SEC. 991. The persons named in sections 985 and 989 of this chapter, serving as jurors, shall be entitled to all their necessary expenses of transportation, and mileage, and per diem of jurors, as provided by law; and if it shall be finally determined that no cause existed for the complaint, the complainant shall pay the costs thereof; and in the first instance, such complainant shall advance the necessary expenses of such jurors, and their fees, but if the said complaint is true, the person or persons, corporation or company owning, using, or proposing to use said dam or reservoir, shall pay the same, and judgment shall be rendered accordingly, in which case the same shall be a lien upon the said reservoir, and the ditches leading thereto and therefrom, and the waters thereof.

Complaint and proceedings thereon.

SEC. 992. That when hereafter any person, company, or corporation, engaged in constructing any dam or reservoir for the accumulation of water, shall be complained of by any person or persons whose life or property may be endangered by the breaking thereof, that the same is insecure, insufficient and dangerous, it shall be the duty of the probate judge to appoint three experts, under whose supervision the same shall be thereafter constructed; nor shall the same be filled with water until the owner or owners thereof shall have filed in the office of the clerk of the probate court a certificate, signed by said experts, that the same is so built that no danger need be apprehended therefrom, and whenever any such complaint shall be made of any reservoir heretofore built of like purport, it shall be the duty of the probate judge to proceed as in this section is provided, and jurisdiction is hereby conferred upon said court to protect, by proper orders made in proceedings therefor, all persons, towns and communities, against dangers resulting from insecure reservoirs.

Penalty for violation.

SEC. 993. Any person, persons or company guilty of filing, erecting, constructing, or maintaining a dam or reservoir which is so filled, erected, constructed or maintained as to endanger life or property in the manner heretofore in this chapter provided, shall be deemed guilty of erecting, constructing, filling or maintaining a nuisance, and being thereof convicted, shall be punished as provided by law.

NOTE.—Act February 16th, 1877.

CHAPTER LVII.

DEAF, MUTE AND BLIND CHILDREN.

Sec. 994. Governor and superintendent of public instruction may contract for education of.

Sec. 995. Providing for payment of charges for educating.

Sec. 996. Not to apply if parent is able, or if estate of child is sufficient.

Sec. 997. Governor and superintendents of public instruction may contract for education of indigent blind youth.
Sec. 998. Counties to pay expenses of transportation.

Sec. 994. The governor and superintendent of public instruction of this territory, are hereby authorized to contract with any suitable institution in any state, territory or federal district in the United States for the education of any deaf mute or blind child, between the ages of eight and eighteen years, who is actually a resident of this territory and whose parents or guardians have no means to educate it, at an expense to the territory if not more than three hundred dollars per annum for each such child, and for a term not exceeding six [years] for each such child: *Provided, however,* That when, in the judgment of the governor and superintendent of public instruction, any such child gives evidence of ability to acquire and use its knowledge the time herein limited may be extended for such further period as they may deem advisable, and upon the certificate of the governor and superintendent of public instruction that such contract has been made, and that any such child is receiving instruction in such institution the territorial auditor shall draw his warrant on the territorial treasurer for the payment of the fees of said institution in accordance with terms of the contract made.

Contract for education.

Expense

Payment.

NOTE—Section 994 is as amended by "An Act to amend section 504 of the fifth division of the revised statutes," approved March 3, 1887, and comprises all of said act except the introductory clause thereof, which clause is as follows. "Section 1 That section 504 of the fifth division of the revised statutes of Montana territory be amended to read as follows, to-wit"

Sec. 995. Whenever the parent or guardian of any deaf, mute or blind child, between the ages of eight and sixteen years, and actually a resident of this territory, shall furnish to the governor and superintendent of public instruction of the territory satisfactory evidence that such child has been placed in a proper institution, either public or private, for the education of such child, it shall be the duty of said governor and superintendent of public instruction to certify such fact to the territoral auditor, who shall thereupon draw his warrant upon the treasurer of the territory for the fee of such institution annually, semi-annually or quarterly as may be required by the rules of such institution, subject to the limitations, as to amount and time for each scholar as prescribed in the preceding section. *Provided, however,* That in no

Payment for child placed in institution by parent or guardian.

case shall any warrant be drawn for the education of such child for a period longer than such child shall remain a pupil of such institution; and that a child once placed in any such institution shall not be entitled to the aid provided for in this chapter, if such child be transferred to any such other institution without the consent of the governor or superintendent of public instruction shall have first been obtained to such transfer for good and sufficient cause shown.

14th ses. p. 76

Payment of traveling expenses.

SEC. 996. Whenever it is brought to the attention of the governor and the superintendent of public instruction of this territory that there is a deaf mute or blind child, between the ages of eight and eighteen years, whose parents or guardian are financially unable to defray the the traveling expenses attendant upon going to or returning from said institution of learning, then it shall be the duty of the governor and superintendent of public instruction to procure suitable transportation for said child, and such escort as may be necessary and required for the safe transportation to and from said institution, and certify the same to the auditor, who shall draw his warrant on the territorial treasurer for the amount thereof.

NOTE —Section 996 act of March 2, 1885

14th ses. p. 49

Instruction of the blind in a trade, etc

SEC. 967. The governor and superintendent of public instruction of the territory are hereby authorized to contract with any suitable institution in any state or territory of the United States for the instruction in any trade or handicraft of any indigent blind person, above the age of eighteen years, who is actually a resident of this territory, at an expense to the territory of not more than three hundred dollars per annum for each such person, and for a term not exceeding two years for each such person; and upon the certificate of said governor and superintendent of public instruction that such contract has been made, and that any such person is receiving such instruction in such institution, the territorial auditor shall draw his warrant on the territorial treasurer for the payment of the fees of such institution in accordance with the terms of such contract.

14th ses. p 49.

Same.

SEC. 998. When any blind person over the age of eighteen years becomes a charge upon any county in this territory, the board of commissioners shall consider the age, ability and character of such blind person, and if said board shall find that it is probable that such blind person can become self-supporting after two years' instruction in any trade or handicraft, the said board shall so inform the governor and superintendent of public instruction, and they shall contract for the instruction of such indigent blind person, under the provisions of section 983 of this chapter; and it shall be the duty of the board of county commissioners of the county of which such indigent blind person is a citizen to provide for his transportation to and from the institution at which he is to be instructed.

NOTE —Sections 997 and 998, act of March 12, 1885

CHAPTER LVIII.

DIVORCE.

Sec. 999. Causes for divorce; not to affect legitimacy of children.
Sec. 1000. Jurisdiction—practice in cases of.
Sec. 1001. Residence of one year necessary.
Sec. 1002. If collusion appear, no divorce decreed.
Sec. 1003. If charges in complaint denied, tried by jury.
Sec. 1004. Court may decree alimony and custody of children.
Sec. 1005. If woman poor, county to pay costs.
Sec. 1006. Proceeding as in chancery cases.

Causes for divorce.

SEC. 999. In any cases in which a marriage has been or may hereafter be contracted and solemnized between any two persons, and it shall be adjudged in the manner hereinafter provided that either party at the time of their marriage was and continued to be impotent naturally, or that he or she had a wife or husband living at the time of such marriage, or that either party has committed adultery subsequent to such marriage, and that such husband and wife have not lived and cohabited together after having knowledge of such adultery, or that such husband or wife has wilfully absented himself or herself from such husband or wife without any reasonable cause for the space of one year, or that a husband has wilfully deserted and absented himself from his wife, and departed from this territory without intention of returning, or that either party have been guilty of habitual drunkenness for the space of one year, or been guilty of extreme cruelty, or been convicted of felony or other infamous crime, and such parties have not lived and cohabited together as husband and wife after such conviction, it shall be lawful for the injured party to obtain a divorce and dissolution of such marriage contract; but no such divorce shall in anywise affect the legitmacy of the children of such marriage.

Legitimacy of children not affected.

Jurisdiction.

SEC. 1000. The district court, sitting as a court of chancery, shall have jurisdiction in all cases of divorce and alimony by this chapter allowed, and the like process, practice, and proceedings shall be had as they are usually had in other cases in chancery, except as hereinafter provided.

Residence required.

SEC. 1001. No person shall be entitled to a divorce in pursuance of the provisions of this chapter who has not resided in this territory one whole year previous to filing his or her bill, unless the offence or injury complained of was committed within this territory, or whilst one or both of such parties reside in this territory.

When divorce not granted.

SEC. 1002. If it shall appear that the injury or offence complained of was by collusion of the parties for the purpose of obtaining a divorce, or that both parties had been guilty of adultery, when adultery is the ground of complaint, then no divorce shall be decreed.

Trial.

SEC. 1003. In all cases of divorce, when the defendant shall appear and deny the charges alleged in the complainant's bill, the same shall be tried by a jury; but if the bill is taken as confessed, the court may proceed to a hearing of the cause by the examination of witnesses in open court, or may refer the matter to the master in chancery to take proofs; but any marriage which may have been celebrated in any other state or territory may be sufficiently proved by the acknowledgments of the parties, their cohabitation as husband and wife, or other circumstantial evidence.

Alimony.

SEC. 1004. When a divorce shall be decreed, it shall and may be lawful for the court to make such order touching the alimony and maintenance of the wife, the care and custody of the children, or any of them, as from the circumstances of the parties and nature of the case shall be fit, reasonable and just; and in case the wife be complainant, to order the defendant to give reasonable security for such alimony and maintenance or may refuse the payment of such alimony and maintenance in any other manner consistent with the rules and practice of the court, and may also grant alimony "*a pendente lite*," and the court may, on application, from time to time make such alterations in the allowances of alimony and maintenance as shall appear reasonable and just.

Poor woman may sue without costs.

SEC. 1005. Any woman suing for a divorce who shall make it appear to the court that she is poor and unable to pay the expenses of such suit, shall be allowed by the court to prosecute her suit without costs.

Decree.

SEC. 1006. The same rule of proceeding shall be had as in other cases in chancery, and upon the hearing the court shall have power to decree a dissolution of the bonds of matrimony if the causes mentioned in this chapter are proven to exist.

NOTE.—Act January 12, 1872, as amended January 24, 1876

CHAPTER LIX.

GENERAL ELECTION LAW.

Sec. 1007. Qualifications of electors.
Sec. 1008. Who may not be electors.
Sec. 1009. Election days.
Sec. 1010. Delegate to Congress and members of of Legislature must have been residents for one year.
Sec. 1011. Appointment of judges and establishment of election precincts.
Sec. 1012. Judges to appoint clerks; term of office.
Sec. 1013. Notices of election to be forwarded to the judges.
Sec. 1014. Judges to post notices at least ten days prior to election.
Sec. 1015. Oath of judges and clerks.
Sec. 1016. May administer oath to each other.
Sec. 1017. Time of opening and closing polls.
Sec. 1018. Manner of depositing ballot; form of same.
Sec. 1019. Duty of judges and clerks on receipt of ballot.
Sec. 1020. Where and for whom an elector may vote; when to cast an open ballot.
Sec. 1021. Mode of procedure upon a challenge.
Sec. 1022. Ballot-box.
Sec. 1023. Requisites of the ballot-box; how examined and locked.
Sec. 1024. On adjournment, lists to be compared and corrected, and votes counted.
Sec. 1025. Ballot-box locked containing poll books to be kept by one judge and key by another.
Sec. 1026. Ballot-box and key to be delivered to judges at next election.
Sec. 1027. Canvass of votes shall be public.
Sec. 1028. Canvass, how made.
Sec. 1029. When ballots exceed the number on poll list, how purged.

Sec. 1030. Count and certificate of votes cast.
Sec. 1031. Final disposition of poll-books.
Sec. 1032. Penalty for failure or neglect to mail poll-books.
Sec. 1033. Returning board, duties of; Certificates mailed to person elected; In case of a tie, a new election; Certificate for compensation of officers of election.
Sec. 1034. Canvass of votes for delegate to congress; New election ordered if a tie.
Sec. 1035. Returns not received by auditor in thirty days must be sent for; Mileage and expenses of messenger; Penalty when officer refuses or neglects to forward returns.
Sec. 1036. Resignation and vacancies.
Sec. 1037. Canvass of returns when two or more counties are united in one district.
Sec. 1038. Compensation of judges and clerks.
Sec. 1039. Penalty if officer of election violate law.
Sec. 1040. Term of office of officers elected.
Sec. 1041. Largest number of votes cast elects.
Sec. 1042. Mis-spelling or abbreviations disregarded.
Sec. 1043. Contested elections.
Sec. 1044. Trial of contests.
Sec. 1045. Who may resign, and to whom resignations tendered.
Sec. 1046. How vacancies may occur.
Sec. 1047. When governor may declare office vacant.
Sec. 1048. When governor may appoint officers to fill vacancies.
Sec. 1049. When county commissioners may fill vacancies, and what.
Sec. 1050. Persons appointed to fill vacancies must qualify.
Sec. 1051. County commissioners to supply poll-books.
Sec. 1052. Clerk to mail poll-books by registered package.
Sec. 1053. Duties of judges in custody of ballot-box and key thereof, and penalty for violating this section.
Sec. 1054. Forms of poll-books and oaths.
Sec. 1055. Penalty for establishing polls in unorganized counties or Indian country.

Sec. 1056. Penalty if officer receive and count votes from such pretended precinct.
Sec. 1057. Penalty if officers neglect or refuse to act.
Sec. 1058. Penalty for stuffing ballot-boxes, etc.
Sec. 1059. Attempting to or obtaining possession of ballot-box, etc.
Sec. 1060. Penalty of voting or attempting to vote in another's name, or abetting same.
Sec. 1061. Penalty for person not qualified fraudulently voting or attempting to vote.
Sec. 1062. Penalty for voting more than once, or knowingly offering two or more tickets folded together.
Sec. 1063. Penalty for intimidating.
Sec. 1064. Perjury and other offenses.
Sec. 1065. Purchasing or attempting to purchase votes forbidden.
Sec. 1066. Selling or attempting to sell votes forbidden.
Sec. 1067. Paying or contributing for nomination or election forbidden; except necessary expenses; official oath.
Sec. 1068. Punishment for violating sections 1065 or 1066.
Sec. 1069. Refusal to take oath forfeits office; swearing falsely punished as perjury.
Sec. 1070. Duty of district attorney.

12th ses p. 68.

Qualifications of electors

SEC. 1007. All male citizens of the United States above the age of twenty-one years, and all male persons of the same age who shall have declared their intention of becoming citizens, and who, under existing laws of the United States, may ultimately become citizens thereof, shall be deemed electors of this territory, and be entitled to vote for delegate to congress, and for territorial, district, county, precinct and municipal officers, provided they shall have resided in the territory six months, and in the county where they may offer to vote, thirty days next preceding the day of election.

NOTE —Section 1007, act of February 23, 1883

Who may not vote

SEC. 1008. No person under guardianship, *non compos mentis*, or insane, or any person convicted of treason, felony, or bribery, in this territory, or any other territory or state in the Union, unless restored to civil rights, shall be permitted to vote at any election.

Elections, when held.

SEC. 1009. A general election shall be held in the several counties, townships or precincts, in this territory, on the first Tuesday after the first Monday in November, 1876, and every two years thereafter, at which election shall be chosen all such officers as are by law required to be elected.

Who eligible as delegate or member of legislature.

SEC. 1010. No person shall be eligible to the office of delegate to congress, member of the council, or house of representatives, unless he has been a resident of the territory for one year.

Judges of election

SEC. 1011. It shall be the duty of the commissioners of the several counties, at their regular session immediately preceding said general election, to appoint three discreet and capable persons, possessing the qualifications of electors, to act as judges of election in each township or precinct; and said board shall designate one or more of said Judges whose duty it shall be to post up, or cause to be posted up, in each precinct or township notices of election, in the manner hereinafter provided. Said board of commissioners shall also set off and establish at said meeting townships or precincts when the same may be necessary. And the clerk of said board shall make out and forward by mail, immediately after the appointment of said judges, a notice thereof in writing directed to each of said judges so appointed. In case there shall be no post office in any one or more of the townships or precincts, in any county, then, in that event the clerk shall forward notices of such appointment, by mail, to the post office nearest such precinct or township, directed to the judges as aforesaid. If in any of the townships or precincts any of said judges refuse or neglect to serve, the voters of such township or precinct may elect a judge or judges to fill vacancies on the morning of the election, to serve at such election.

Duty of county clerk.

Clerks of election

SEC. 1012. The said judges shall choose two persons, having the same qualifications with themselves, to act as clerks of the election. The said judges shall be and continue judges of all elections of civil officers to be held in their respective townships, until other judges shall be appointed, as hereinbefore directed; and the said clerks of election may continue to act as such during the pleasure of the judges of election, and the county commissioners shall, from time to time, fill such vacancies which may occur in the offices of judges of election in any township within their respective counties.

Terms of judges and clerks.

SEC. 1013. The clerks of the several boards of county commissioners shall, at least thirty days before any general election, make out and forward by mail to such judge or judges as shall be designated by the county commissioners, three written notices for each township or precinct, said notices to be as near as circumstances will admit, as follows:

Notices of election

Notice is hereby given that on the first Tuesday after the first Monday of November, at the house of ...., in the county of........, an election will be held for delegate to congress, members of the legislative assembly, county, township, and precinct officers, (naming the offices to be filled), which election will be open at 8 o'clock in the morning and continue open until 6 o'clock in the afternoon of the same day.

Dated this.......day of........A. D., 18.., (as the case may be).

Signed, A B, clerk of the board of county commissioners.

SEC. 1014. The judge or judges aforesaid, to whom such notice shall be directed as provided in section 1013 of this chapter, shall cause to be put up in three of the most public places in each township or precinct the notices of election in such township or precinct, at least ten days previous to the time of holding any general election, and in cases where townships or precincts may be set off by leave as election precincts, said notices shall be posted as follows: one at the house where the election is authorized to be held, and the others at the two most public and suitable places in the township or precinct.

Notice to be posted

SEC. 1015. Previous to votes being taken the judges and clerks of election shall take and subscribe the following oath:

Oath of judges and clerks

I, A B, do solemnly swear or affirm that I will perform the duties of judge of the election (or clerk, as the case may be) according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit and abuse in conducting the same.

SEC. 1016. In case there shall be no judges or justices of the peace present at the opening of the election, or in case such judge or justice of the peace shall be appointed judge or clerk of the election it shall be lawful for the judges of the election, and they are hereby empowered, to administer the oath to each other, and to the clerks of the election, and the person administering the oath shall cause an entry thereof to be made, subscribed by him and prefixed to the poll book.

Who may administer oath

Polls when open.

SEC. 1017. At all elections to be held under this article, the polls shall be opened at eight o'clock in the forenoon and continue open until six o'clock in the afternoon of the same day, at which time the polls shall be closed, and at the opening of the polls one of the clerks, under the direction of the judges, shall make proclamation of the same, and thirty minutes before the closing of the polls proclamation shall be made in like manner, and the polls shall be closed in a half hour; but the board may, in their discretion, adjourn the polls at twelve o'clock at noon for one hour, proclamation of the same being made.

Ballots.

SEC. 1018. Every elector shall deliver, in full view of one of [the] judges of election, a single ballot or piece of paper, on which shall be written or printed the names of the persons voted for, with a pertinent designation of the office which he or they may be intended to fill. Said ballots may be open or folded, as the voter may choose.

Name of voter to be announced and entered in poll book.

SEC. 1019. The judges to whom any ticket may be delivered shall, upon the receipt thereof, pronounce with an audible voice, the name of the elector, and if no objections be made to him and the judges shall be satisfied that the elector is legally entitled to vote, he shall immediately put the ballot in the box, without inspecting the name thereon. The clerk of the election shall enter the name of the elector and number in the poll book.

Where elector may vote.

SEC. 1020. It shall be lawful for any elector to vote for delegate to congress at any place of holding elections in this territory, for members of the legislative assembly, and all other officers, at any place for holding elections within the particular limits for which such member of the legislative assembly and such other officers are to be elected: *Provided*, That an elector, qualified to vote for part and not all of the officers to be chosen at any election, shall vote an open ticket, and the judges may determine the legality of such vote.

Proceedings in case of challenge.

SEC. 1021. If any person offering to vote shall be challenged as unqualified by any judge or clerk of the election, or any other person entitled to vote at the same poll, and either judge may challenge any person offering to vote whom he shall know or suspect not to be qualified, the judge shall declare to the person so challenged the qualifications of an elector; if such person shall then declare himself duly qualified and the challenge be not withdrawn, he then shall take and subscribe the following oath: "I do solemnly swear (or affirm) that I am a citizen of the United States; that I am over the age of twenty-one years; that I have resided in the Territory of Montana six months immediately preceding the day of the election at which I now offer to vote, and that I have resided in the county where I now offer to vote thirty days next preceding the election at which I now offer to vote, and that I am known by the name in which I now offer to vote, and that I have not voted at any other poll at this election." And in case of persons of foreign birth [who] have not been admitted to full citizenship under the existing laws of the United States that part of the oath relative to citizenship shall be dispensed with, and the following substituted: "I have resided in the United States six months, and have declared my intention to become a citizen of the United States, in conformity to the laws thereof." And thereupon, if any male householder and freeholder of the county where such person offers to vote, shall take and subscribe the following oath or affirmation, to-wit: "I swear (or affirm) that I am a householder and freeholder of the county of (here state county) and Territory of Montana, and that I know (here state the name of person offering to vote), and that he has been a resident of the Territory of Montana for six months next preceding this election, and that he has been a resident of said county for thirty days next preceding this election." Then and not till then shall such person offering to vote be admitted and allowed to vote. Such oaths shall be in writing or printed, or both, and may be taken before either of the judges of such election who shall attach his jurat thereto. Such oaths shall be kept by the judges and sent with the returns of the election to the clerk of the board of county commissioners of the county in which such election was held, to be filed and kept by such clerk. Such oaths shall be open to the inspection of the grand jury of the county, and any person may obtain a certified copy of the same from said clerk upon paying the sum of fifty cents, and when any prosecution for any criminal offence is based upon said [oaths] or either of them before any magistrate or probate judge, upon a subpœna therefor said clerk shall, by himself or deputy, produce said oaths for use upon the trial of such prosecution.

NOTE—Section 1021 is as amended by "An act amending section 529 of the fifth division of the Revised Statutes of Montana," approved March 5, 1887, and comprises all of said act, except the introductory clause to sections 1 and section 2, said introductory clause to section 1 is as follows. "Section 1.

That section 529 of the fifth division of the Revised Statutes of the Territory of Montana be and the same is hereby amended to read as follows", and said introductory clause to section 2 is as follows: "Section 2 This act shall be in force from and after its passage"

Ballot box.

SEC. 1022. There shall be provided and kept by the judges of each election precinct (at the expense of the county) a suitable ballot box, with a lock and key.

Same.

SEC. 1023. There shall be an opening in the lid of such box of no larger size than shall be sufficient to admit a single folded ballot. Before opening the polls the ballot-box shall be carefully examined by the judges of election that nothing shall remain therein; it shall then be locked and the key thereof delivered to one of the judges, to be designated by the board, and shall not be opened during the election, except in the manner and for the purpose hereinafter mentioned.

Poll lists to be compared and corrected.

SEC. 1024. Upon the adjournment of the polls the clerk shall, in the presence of the judges, compare their respective poll lists, compute and set down the number of votes, and correct all mistakes that may be discovered, according to the decision of the board, until such poll lists shall be made in all respects to correspond.

Poll book to be placed in ballot box

SEC. 1025. The ballot-box shall be opened and the poll-books placed therein, and such box shall then be locked, and a covering with a seal placed on the lid of such box so as to entirely cover the same, and the key delivered to one of the judges and the box to another, to be designated by the board.

Ballot box, when opened.

SEC. 1026. The judge having the key shall keep it in his own possession, and deliver it again to the board at the next opening of the polls; and the person having the care of the box shall carefully keep it without opening it or suffering it to be opened, or the seal thereof to be broken or removed, and shall publicly in that condition deliver it to the board of judges at the next opening of the polls, when the seal shall be broken, the box opened, the poll-books taken out, and the box again locked.

Canvass.

SEC. 1027. As soon as the polls of the election shall be finally closed, the judges shall immediately proceed to canvass the vote given at such election, and the canvass shall be public, and shall continue until completed.

Manner of canvassing.

SEC. 1028. The canvass shall commence by a comparison of the poll lists from the commencement, and the correction of any mistakes that may be found therein, until they shall be found to agree; the box shall then be opened and the ballots found therein counted by the judges, unopened, except to ascertain whether each ballot is single; and if two or more shall be found so folded together as to present the appearance of a single ballot, they shall be laid aside until the count of the ballot is completed, and if, on a comparison of the count with the poll lists and the appearance of such ballots, a majority of the judges shall be of the opinion that the ballots thus folded together were voted by one elector, they shall be rejected.

Excess of ballots withdrawn.

SEC. 1029. If the ballots in the box should be found to exceed in number the whole number of votes in the poll lists, they shall be placed in the box (after being purged after the manner above stated), and one of the judges shall publicly draw out and destroy therefrom so many ballots unopened as shall be equal to such excess.

Count of the votes.

SEC. 1030. The ballots and the poll lists agreeing, or being made to agree, the board shall then proceed to count and ascertain the number of votes cast, and the clerks shall set down in their poll books the names of every person voted for, and, at full length, the office for which such person received such votes, and the number he did receive, the number being expressed at full length, such entry to be made, as near as circumstances will admit, in the following form to-wit:

Form of entry in poll book

At an election held at the house of A B, in the township or precinct of.............., in the county of.............., and the Territory of Montana, on the..........day of.........., A. D. 18.., the following named persons received the number of votes annexed to their respective names for the following described offices, to-wit:

A B had........votes for delegate to congress.

J D had........votes for member of the legislative council.

R L had........votes for member of the house of representatives.

(And in like manner for any other person voted for).

Certified by us. Attest:

B and C D } Clerks of election. M N, O P, Q R } Judges of election.

Disposition of poll books and ballot box

SEC. 1031. The judges of election shall then enclose and seal one of the poll books, under cover, directed to the clerk of the board of county commissioners of the county in which such election was held, and the packet thus sealed shall, within three days from the closing of the polls, be conveyed by one of the judges or clerks of election, to be determined by lot, to the post office nearest the house in which said election for such precinct was held, and register and mail the same to the clerk of the board of county commissioners, and the other poll books, together with the ballot box, shall be deposited with one of the judges of election, to be determined by lot, if not otherwise agreed upon, and the said poll book shall be open to the inspection of any elector at any time thereafter who may desire to examine the same.

Penalty for failure to safely deliver or mail poll book to county clerk

SEC. 1032. If any judge or clerk, after being selected by the judges of election to convey the poll books of such election to the post office nearest the house in which said election was held, and mail the same, as provided for in section 1031 of this chapter, shall fail, refuse or neglect to convey and mail the said poll books, safe with seal unbroken, he shall for every such offence, when convicted thereof, pay the sum of five hundred dollars, and be imprisoned in the county jail for a period not exceeding three years, said fine to be recovered in a civil action in the district court in the name of the county commissioners.

County commissioners shall make abstracts of returns and clerk shall make certificates of election.

SEC. 1033. After the fifteenth day after the close of any election held under the provisions of this chapter, *or sooner* if all the returns shall be received, the chairman of the board of county commissioners, or in his absence any other member of the board, shall, taking to his assistance the probate judge or a justice of the peace, and one other officer of the county, or any county officer, proceed to open the returns and make abstracts of the votes. Such abstracts of votes for delegate to congress shall be on one sheet; the abstract of votes for members of the legislative assembly shall be on another sheet; and the abstract of votes for territorial and district officers shall be on another sheet; and the abstracts of votes for county and township officers shall be on another sheet. And it shall be the duty of the clerk of said board of county commissioners immediately to make up a certificate of election to each of the persons having the highest number of votes for members of the legislative assembly, county and township officers, respectively, and to deliver such certificate to the persons entitled to them by mailing the same in "registered" letters to the address of such persons respectively: *Provided*, That when a tie vote shall exist between two or more persons for any district or county office, the clerk of the board of county commissioners shall immediately give notice of another election, giving at least ten days notice. And it shall be the duty of the clerk of the board of county commissioners of such county, on receipt of the returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of the election shall be entitled for their services, and lay the same before the county commissioners at their next session, and the board of county commissioners shall order the compensation aforesaid to be paid out of the the county treasury.

NOTE —Last section preceding is from act of February 15th, 1877.

Canvass of votes for delegate in congress

SEC. 1034. The clerk of the board of county commissioners, immediately after making out the abstract of votes given in his county, shall make a copy of each of said abstracts, and transmit the same by mail as a registered package to the auditor of the territory at the seat of government, and it shall be the duty of the United States marshal and treasurer of the territory in the presence of the governor to proceed within thirty days after the election, and sooner if the returns be received, to canvass the votes given for delegates to congress: *Provided*, That in case the United States marshal and treasurer cannot agree as to the number of votes that two or more persons are entitled to for delegate to congress, then in that event the governor shall decide who has the highest number of votes, and shall issue a certificate of election to such person, under his hand and the seal of the territory, countersigned by the secretary. In case there shall be no choice by reason of two or more persons having an equal and highest number of votes, then the governor shall by proclamation order a new election.

New election

Messenger to sent for delayed returns.

SEC. 1035. If the returns of the election of any county in this territory shall not be received at the office of the auditor of the territory within thirty days after the election, the said auditor shall forthwith send a messenger to the clerk of the county commissioners, whose duty it shall be to furnish the said messenger with a copy of such returns, and the messenger shall be paid out of the county treasury of said county the sum of twenty cents per mile for each mile he shall necessarily travel in going to and returning from said county, and if any officer or officers, whose duty it is to forward returns of any election to the board of county commissioners, auditor, or other officer of the township, county, district, or territory, shall omit, neglect or refuse to perform such duty as is by law required, he shall be liable to pay, in an action brought therefor, in any proper court, the expenses of sending for and procuring such returns or poll books as he is by law required to forward, and he shall be entitled to no exemption whatever on such judgment, and he or they shall moreover be deemed guilty of a misdemeanor, and being thereof convicted, shall be fined not less than one hundred nor more than five hundred dollars,, and shall be imprisoned not less than one day nor more than six months in the county jail, and it is hereby made the duty of the canvassing board to send for and procure such returns before canvassing the votes if the same can be procured.

Resignation

SEC. 1036. Any person who shall receive a certicate of his election shall be at liberty to resign such office though he may not have entered upon the duties thereof, or taken the requisite oath of office. And when any vacancy shall happen in the office of member of council or house of representatives by death, resignation, or otherwise, and a session of the legislature is to take place before the next regular election, the governor shall issue a writ of election, directed to the clerk or clerks of the county or counties in which such vacancy shall happen, commanding him to notify the judges in his county or counties to hold a special election to fill such vacancy or vacancies at a time appointed by the governor.

Election to fill vacancy.

Canvass for district officers

SEC. 1037. Where two or more counties are united in a council or representative district, or for the election of any other officer, the canvassing boards of the counties interested shall canvass the vote of said joint officer or officers the same as for other county officers. It shall be the duty of the county clerk of the board of county commissioners of the county or counties last established to make certified abstracts of the canvass, and immediately forward a copy of said abstract or abstracts by mail, as registered package, to clerk of senior county, and the clerk and probate judge, or any other county officer, including the clerk, shall at once canvass said votes, and the clerk of the senior county shall at once issue certificates of election to the person or persons having the highest number of votes entitled thereto. And for the purpose of this article the county first created shall be deemed the senior county, and when all the counties were created by the same act the first named therein shall be deemed the senior county. That section 31 and so much of section 32 of an act to provide for biennial elections, approved February 11, 1876, as refers to mileage to be paid to the clerk of the board of county commissioners for attending at another county to canvass votes, be and the same is hereby repealed.

NOTE—Act February 3, 1877, last section

Per diem for election officers

SEC. 1038. There shall be allowed out of the county treasury of each county to the several judges and clerks of election, when engaged in any election, three dollars per diem; to the person appointed to post up notices of election, and to the judge or clerk conveying poll books to the post office and mailing, the same.

Penalty for violation by judge, etc

SEC. 1039. If any judge or clerk of election, or any other person in any manner concerned in conducting the election, shall corruptly violate any of the provisions of this chapter, he shall pay to the county a sum not less than fifty or more than one thousand dollars, and be imprisoned in the county jail until such fine is paid, the same to be recovered by civil action in the name of the county commissioners of the proper county, for the use of the common schools of said county.

Terms of office.

SEC. 1040. The term of office of all district, county and township officers elected under the provisions of this chapter, shall begin on the third Monday in December next ensuing after the election, and the term of office of all officers elected at the general election in August, 1874, shall hold and extend until the third Monday in December next ensuing the expiration of their present term of office, and all county, district and township officers elected at the August election in the year 1875, shall hold their respective offices until the third Monday in December, 1878: *Provided*, That the term of office of the county treasurer shall begin on the first Monday in March next ensuing their election, and the county commissioners of the several counties are hereby authorized and empowered to fill any and all vacancies in said office created by the expiration of the term of office of any incumbent, or from any other cause: *Provided*, That when any officer who by law is required to give bonds before entering upon, or when entering upon, his said office, and whose term of office is hereby prolonged, shall before entering upon that portion of his term hereby prolonged, give a new undertaking in the form and to be approved as is now provided by law.

Bonds.

Highest number of votes elect.

SEC. 1041. In all elections the person having the highest number of votes for any office shall be deemed to have been elected.

Misspelling or abbreviation disregarded.

SEC. 1042. In counting the votes the judges of election shall disregard misspelling or abbreviation of the names of candidates for the offices, if it can be ascertained from such votes for whom they were intended.

Contests.

SEC. 1043. All contests of county and township officers shall be tried in the proper county, and when an elector shall wish to contest such an election he shall file with the clerk of the board of county commissioners within ten days after such person shall have been declared elected, a statement in writing, specifying the grounds of contest, verified by affidavit, and such clerk shall issue to the contestant a notice to appear at time and place specified in the notice, before the district court, which notice, with a copy of such statement, shall be delivered to the sheriff, who shall, within five days, serve the same on the contestor by delivering to him a copy of such notice and statement, or by leaving such copy at his usual place of residence. That in all contested election cases, or rights thereto existing, or which may hereafter occur, when the said notice shall not have been served and given in compliance herewith, the same shall be a bar to any and all persons making such contests, and to all actions and rights of action thereto.

Trial.

SEC. 1044. The district judge at the time specified in the notice (and it shall appear by the sheriff's returns that notice has been duly served on the contestor), shall proceed to try such contest. Each party shall be entitled to subpœnas, and subpœnas *duces tecum*, as in ordinary cases in law, and the district court shall hear and determine in such manner as shall carry into effect the expressed will of a majority of the legal voters, as indicated by their votes for such office, not regarding technicalities or error in spelling the name of any candidate for such office, and the clerk of said court shall issue a certificate to the person declared to be elected by said court, which shall be presumptive evidence of the right of said person to hold such office, and he shall be entitled to enter upon and hold said office until such decision shall be reversed on appeal.

Resignations, to whom made.

SEC. 1045. Resignations may be made as follows:

First. By all officers elected to the legislative assembly, to the governor of the territory.

Second. By all township and county officers, to the county commissioners of their respective counties.

Third. By all other officers holding office by appointment, to the body or officers that appointed them.

When vacancy occurs.

SEC. 1046. Every office shall become vacant on the happening of any of the following events before the expiration of the term of such office:

First. Ceasing to be an inhabitant of the territory, county, or township for which he shall have been elected or appointed, or within which the duties of his office are to be discharged.

Second. His conviction of any infamous crime, or of any offence involving the violation of his official oath.

Third. His refusal or neglect to take the oath of office, or to execute his official bond, or deposit such oath or bond within the time prescribed by law.

Governor may declare vacancy.

SEC. 1047. The governor shall also declare vacant the office of every official required by law to execute an official bond, when a judgment shall be obtained against such officer for a breach of the condition of such bond.

When gov. may fill vacancy

SEC. 1048. When a vacancy shall occur during a recess of the legislature, in any office which the legislature is authorized to fill by election, or which the governor, subject to confirmation of legislative council, is authorized to fill, the governor, unless it be otherwise specially provided, may appoint some suitable person to perform the duties of such office.

Appointment by commissioners or governor.

Sec. 1049. When at any time there shall be in any of the county or township offices no officer duly authorized to execute the duties thereof, some suitable person shall be appointed by the county commissioners to perform the duties of said office: *Provided,* That if there is no board of county commissioners in any county, the governor may, on notice of such fact, create such board.

Appointee shall qualify.

SEC. 1050. Every person so appointed, in pursuance of the last two preceding sections, shall, before proceeding to execute the duties assigned them, qualify in the same manner as required by law of the officers in whose place they shall be appointed, and they shall continue to exercise and perform the duties of the office to which they shall be appointed until such vacancy shall be regularly supplied as provided by law.

Commissioners to provide poll books.

SEC. 1051. That in addition to the duties already assigned them, it shall be the duty of the board of county commissioners of each county to cause to be provided for the several election precincts in each county, poll-books, after the forms hereinafter prescribed.

Clerks to forward poll books to judges.

SEC. 1052. That it shall be the duty of the clerk of said board to forward by mail, as a registered package, to one of the judges of election so appointed, in each precinct, at least ten days prior to any general election, and five days prior to any special election, two copies of such blank poll books for the use of the judges of such township or precinct.

Duty of election officers as to poll books, ballot boxes, etc.

SEC. 1053. The judge having the key shall keep it in his own possession, and deliver it again to the board at the next opening of the polls; and the person having care of the box shall carefully keep it without opening it or suffering it to be opened, or the seal thereof to be broken or removed, and shall publicly in that condition deliver it to the board of judges at the next opening of the polls, when the seal shall be broken, the box opened, the poll books taken out, and the box again locked. That the judges having the custody of the key, box, and poll books, who shall refuse or neglect to comply with the requirements of this section, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than five hundred dollars, nor more than ten thousand dollars, or imprisonment not less than three months, or more than one year, or by such fine and imprisment as a court of competent jurisdiction may see fit to impose.

Form of poll books.

SEC. 1054. Such poll books and oaths shall be in the following form:

TERRITORY OF MONTANA, } *ss.*
County of ......, }

We, ... and ......, do solemnly swear, that we will perform the duty of judges of the election according to law, and to the best of our ability, and that we will studiously endeavor to prevent fraud, deceit, and abuse, in conducting the same, so help us God.

.... } Judges.
.... }

Subscribed and sworn to before me, ..., this day of......, A. D. 18..

TERRITORY OF MONTANA, } *ss.*
County of ....., }

We, ... and ....., do solemnly swear, that we will faithfully perform the duties of clerks of the election, according to law, and to the best of our ability, and that we will studiously endeavor to prevent fraud, deceit, and abuse, in conducting the same, so help us God.

.... }
.... } Clerks.

Subscribed and sworn to before me, this .... day of ...., 18...

POLL BOOKS OF PRECINCT NO......

NO	NAMES	NO	NAMES

At an election held at ...., in precinct No...., in the county of ...., in the territory of Montana, the following named persons received the number of votes annexed to their respective names, for the following offices, to-wit:

Certified by us.

.... }
.... } Judges.
.... }
.... }
.... } Clerks.
.... }

Precincts, where same may not be established.

SEC. 1055. No officer of this territory, nor of any county within this territory, shall establish a precinct within the limits of any county not fully organized, or at any Indian agency, or at any trading post in the Indian country, or on any Indian reservation whatever; and any county or territorial officer violating the provisions of this section shall be guilty of a misdemeanor, and fined in a court of competent jurisdiction in a sum not less than five hundred dollars or more than two thousand dollars.

Penalty for counting vote from unauthorized precinct

SEC. 1056. Any county or territorial officer whose duty it is, under existing laws, to open returns and make abstracts of votes, who shall receive and count the returns from any pretended election precinct which may be established in contravention of the preceding section of this article, shall be guilty of felony, and be punished by fine not less than one thousand nor more than five thousand dollars, and be imprisoned in the territorial penitentiary not less than one nor more than five years.

Penalty for failure to perform duty.

SEC. 1057. Any judge, clerk or county commissioner who shall fail, refuse or neglect to perform any of the duties imposed upon him by the provisions of this article, shall be fined in any sum not exceeding five hundred dollars, and imprisonment in the county jail for a period not exceeding three years, or both such fine and imprisonment, at the discretion of the court, unless, for good cause shown, both such fine and imprisonment may be remitted by the court.

Penalty for stuffing ballot box or for counting false votes.

SEC. 1058. Any person guilty of stuffing any ballot box, either by false bottoms or in any manner whatever, before the votes are counted, or while being counted, and any judge of any election who shall knowingly count or read off the votes falsely, shall be deemed guilty of a felony, and upon conviction thereof shall be imprisoned in the territorial prison for each and every offence so convicted, for a term not less than one nor more than five years.

Penalty for interference with ballot box etc.

SEC. 1059. If any person or persons, at any election held by virtue of any law of this territory, shall, either by force, fraud, stealth or otherwise destroy, obtain or attempt to obtain possession of any ballot box, or any ballot or ballots therein deposited, or any poll book, tally list or other articles kept and used by the judges and clerks in conducting such election, while the voting at such election is going on during the day of election, or either before or after the ballots have been taken out of the box and counted by the judges of election, shall be deemed guilty of a felony, and upon conviction thereof, be imprisoned in the territorial prison for each and every offence so convicted of, for a term of not less than one nor more than five years.

Penalty for voting in another's name

SEC. 1060. Any person who shall vote or attempt to vote in the name of any other person other than his own, and any person who causes, aids or abets any person so to vote or attempt to so vote, shall, upon conviction thereof, be punished for each offence by imprisonment in the territorial prison not less than one year nor more than five years.

Penalty for fraudulent voting.

SEC. 1061. If any person not having the legal qualifications of a voter shall fraudulently vote, or shall fraudulently attempt to vote, at any election, such person, on conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one nor more than five years.

Penalty for repeating.

SEC. 1062. If any elector shall vote more than once at any election, or shall knowingly hand in two or more tickets folded together, or shall attempt to vote more than once at the same election, he shall, on conviction thereof, be punished by imprisonment in the territorial prison for a term not less than one year nor more than five years.

Penalty for interference with elector

SEC. 1063. If any person shall directly or indirectly use any threats, menace or force, or any corrupt means or device at or previous to, or during any election held pursuant to any election laws of this territory, towards any elector, to hinder or deter him from voting at such election, or shall attempt by any means whatever to awe, restrain, hinder or disturb any elector in the free exercise of the right of suffrage, he shall, upon conviction thereof, be fined in any sum not less than fifty nor exceeding five hundred dollars.

Penalty for sundry violations.

SEC. 1064. Any person wilfully, corruptly or falsely swearing or affirming before the board of judges of election, or any member thereof, or the clerk, while in session or in holding an election, shall be deemed guilty of perjury, and on conviction shall be punished. If any member of any board of judges or clerks of election, or any other person in any manner concerned in conducting an election, shall wilfully and corruptly violate any of the provisions of this article, the penalty for which is not herein prescribed, or be guilty of any fraud, deceit or abuse in the execution of the duties of his office, the penalty for which is not herein prescribed, he shall be punished for each and every offence whereof he shall be convicted, by imprisonment in the territorial prison for a term not less than one nor more than five years; or shall pay a fine of not less than fifty nor more than five hundred dollars, in the discretion of the court.

NOTE—The preceding sections of this chapter, except where otherwise specially noted, are from the act of February 11, 1876

Purchase of votes prohibited.

SEC. 1065. That no person shall purchase, or attempt to purchase, either with money or any other valuable thing, the vote of any elector of the Territory of Montana.

Selling vote prohibited.

SEC. 1066. That no elector of the Territory of Montana shall sell or attempt to sell, either for money or any other valuable thing, his vote to any person whatever.

SEC. 1067. That no person who shall hereafter be a candidate for any office whatever in the Territory of

Candidate prohibited from use of money in election except for certain purposes

Montana, shall pay or contribute, either directly or indirectly, any money or other valuable thing; or knowingly allow it to be done by others for him, either for the nomination, election or appointment thereto, except for necessary expenses as follows, to-wit:

First. For printing and traveling expenses.

Second. For the dissemination of information to the public.

Third. For political meetings, demonstrations and conventions.

The foregoing expenses may be incurred either in person or through other individuals or committees of organizations duly constituted for the purpose, but nothing contained in this article shall be so construed as to authorize the payment of money or other valuable thing for the vote or influence of any elector of this territory, either directly or indirectly, at any election or nominating convention, or for any corrupt purpose whatever, incident to an election; and all officers hereafter elected or appointed, shall, before entering upon the duties of their respective offices, take and subscribe the following oath:

Oath.

"I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the organic act of the Territory of Montana, and that I will discharge the duties of my office with fidelity; that I have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing, to procure my nomination or election (or appointment) except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of this territory, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office, other than the compensation allowed by law."

The foregoing oath shall be administered to the members of the council and house of representatives in the hall of their respective houses, by a judge of the supreme court, and filed by him in the office of the secretary of the territory.

In the case of all other territorial officers, this oath shall be administered by the governor, and filed in the office of the secretary of the territory. In the case of all other officers this oath shall be administered by some person authorized by law to administer oaths, and shall be filed in the office of the clerk of the county in which said officer was elected.

Penalty for violating sections 1065 and 1066

.SEC. 1068. Every person violating either section 1065 or 1066 of this chapter, or both, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than one hundred dollars, nor more than five hundred dollars, and to imprisonment in the penitentiary for not less than three months, nor more than one year, or both, or either, at the discretion of the court.

Penalty for refusing to take oath.

SEC. 1069. Any person refusing to take the oath prescribed in section 1067 of this chapter, shall forfeit his office; and any person who shall be convicted of having sworn or affirmed fasely, or of having violated said oath or affirmation, shall be guilty of perjury, and be punishable therefor as provided by law, and be forever disqualified from holding any office of trust or profit within this territory.

Duty of county attorney.

SEC. 1070. That it is hereby made the duty of the county attorney for that county in which an offence against any of the provisions of this chapter may have been committed, to bring an action in the name of the territory of Montana, against any person or persons so offending.

NOTE—Act February 8th, 1876, except where otherwise specially noted.

CHAPTER LX.

FEES OF CLERKS OF COURTS.

[*See chapter LII.*]

Sec. 1071. Fees of clerk of the supreme court.
Sec. 1072. Fees of clerks and deputy clerks of the district courts; penalty for receiving illegal fees.
Sec. 1073. Fees to be paid by parties to actions, and to be taxed as costs.

12th ses p 6

Fees of clerk of supreme court

SEC. 1071. The clerk of the supreme court shall receive the following fees:

For entering each motion, order, rule, continuance, denial, or judgment, first folio......	.50
Each subsequent folio	.20
For copy of any record, opinion of court, or any paper on file, per folio	20
For filing transcript.........................	1 00
For certificate and seal.....................	1.00

For entering each cause on the docket	25
For each remittitur or mandate, per folio	20
For searching records on file in his office, except for bar or suitor	50
For filing each paper	.20
For certificate of admission of attorney, entering names on roll, and all services connected therewith	5 00
For administering each oath, and certifying to the same	25
For acknowledgment and seal	1.00
For making transcript on appeal to the supreme court of the United States, per folio	.15
For making any other record or entry not herein provided for, per folio	.15
For indexing entries, each name	.10
For taking and approving each bond and undertaking	1 00

NOTE.—Section 1071, act of February 15th, 1881.

Ex ses p. 3

Fees of clerks and deputy clerks of district courts.

SEC. 1072. In addition to the salaries now provided by law for the clerks and deputy clerks of the district courts, they shall be entitled to charge and collect the following fees:

For taking depositions, per folio	$0.15
For taking acknowledgments to conveyances	1.00
For taking and filing and recording declaration of intention to become a citizen	2.00
For final naturalization papers	3.00
For making transcripts on appeal, when they exceed seventy-five folios, in excess of seventy-five folios, per folio	.10
For all transcripts of judgments, or other papers ordered by the parties to civil actions, other than transcripts on appeal, and to include certificate and seal, to be paid for by the parties ordering the same, per folio	.10

Provided, That such charges shall not be taxed as costs against the adverse party; and any such clerk or deputy who shall receive any fee or reward or salary otherwise than specifically provided by law, shall be liable to the county, territory, or person paying the same, for ten times the sum so paid to such clerk or deputy, to be recovered by civil action, and shall be deemed guilty of a misdemeanor, and, on conviction shall be fined in any sum not less than one hundred nor more than five hundred dollars, and shall be imprisoned in the county jail for a term of not less than thirty nor more than ninety days.

Ex ses. p. 3.
Same

SEC. 1073. In addition to the fees hereinbefore provided, the clerks and deputy clerks of the district courts shall be entitled to collect and receive upon the commencement of each civil action (unless the same be prosecuted *in forma pauperis*,) from the person or persons prosecuting the same, the sum of seven dollars and fifty cents; and upon rendition of final judgment in favor of the plaintiff or plaintiffs, the sum of two dollars and fifty cents, to be collected from the plaintiff in such action. Upon the appearance of the defendant or defendants in each civil action, the sum of two dollars and fifty cents, to be paid by the defendant or defendants entering his or their appearance; and upon the entry of final judgment in favor of the defendant or defendants, the further sum of seven dollars and fifty cents, to be paid by the defendant or defendants in whose favor the judgment is entered, and the items of fees in this section specified shall be the only charges that the clerk or deputy clerk of a district court shall collect or receive in any civil action in any district court of this territory. Such sums so paid by said parties to such actions to the clerk, shall be taxed as other costs in such actions.

NOTE—Sections 1072 and 1073, act of July 22d, 1879

CHAPTER LXI.

FEES OF COUNTY OFFICERS, JUSTICES OF THE PEACE, CONSTABLES, JURORS AND WITNESSES.

[*See Chapter LII.*]

Sec. 1074. Fees of sheriffs for sundry services.
See. 1075. Fees for board of prisoners.
Sec. 1076. Repeal.
Sec. 1077. Fees for transporting prisoners to the penitentiary, to be paid by the territory.
Sec. 1078. Fees for board of territorial prisoners in county jails after conviction.
Sec. 1079. Fees of jurors and witnesses.
Sec. 1080. Fees of jurors, by whom paid in civil cases in justice and probate courts.
Sec. 1081. Affidavits of jurors and witnesses.
Sec. 1082. Certificate to be given by clerk.
Sec. 1083. Payment of certificate.
Sec. 1084. County clerk to keep register of orders issued.
Sec. 1085. Order of payment by treasurer.

Sec. 1086. No fee for affidavit.
Sec. 1087. Repeal.
Sec. 1088. Fees of probate judges.
Sec. 1089. Fees of constables.
Sec. 1090. Fees of coroners.
Sec. 1091. Fees of notaries public.
Sec. 1092. Fees of masters in chancery.
Sec. 1093. Fees of county clerks and recorders.
Sec. 1094. Fees of justices of the peace.
Sec. 1095. Fees of jurors on insane inquests.
Sec. 1096. Fees allowed justices of the peace and constables limited in total amount.
Sec. 1097. List of fees to be posted in office.
Sec. 1098. Amount of fees to be endorsed on returned process.
Sec. 1099. Persons liable for costs or fees entitled to an itemized bill.
Sec. 1100. Receipt to be given for fees paid when required.

Fees of sheriff.

Sec. 1074. It shall be lawful for sheriffs to demand and receive the following fees: For transporting prisoners and insane persons, per mile, including diet and all expenses, twenty-five cents; for summoning jurors, each, thirty cents; for serving summons, including copy of complaint and summons on each defendant, fifty cents; for serving subpœna and copy, each witness, thirty cents; for advertising property for sale, one dollar; for every mile actually and necessarily traveled, fifteen cents; for serving and returning *scire facias*, seventy-five cents: for committing prisoners to jail, thirty cents; attending before any judge with prisoner on writ of *habeas corpus*, seventy-five cents; for serving writ of possession, with aid of *posse comitatus*, three dollars; without such aid, one dollar and fifty cents: for attending district court, per day, two dollars and fifty cents; for attending probate court, per day, one dollar and fifty cents; for serving execution or attachment, seventy-five cents; for executing and acknowledging deed of sale of real estate, two dollars; for making certificate of sale previous to execution of deed, seventy-five cents; for taking replevin forthcoming, or other bond, seventy-five cents; for executing capias or warrant in criminal cases, seventy-five cents; for serving declaration in ejectment and proper return for each defendant, seventy-five cents; for commissions on money collected without sale, on all sums under five hundred dollars, one and one-half per cent.: on all sums between five hundred and one thousand dollars, one per cent.; and on all sums over one thousand dollars, three-quarters of one per cent; for commissions on money collected by sale by sheriff on any sum under one thousand dollars, two per cent.; on all sums between one thousand and five thousand dollars, one per cent.; on all sums over five thousand dollars, one-eighth of one per cent.: *Provided*, That nothing in this act shall be held to apply to the compensation received by the sheriff for board of prisoners or the transportation of convicts sentenced to confinement in the penitentiary.

NOTE 1.—See chapter LII

NOTE 2—Section 1074 is from act of March 10, 1887. See note to section 1093.

Fees for board of prisoners

SEC. 1075. The fees allowed the sheriffs of the several counties of this territory for the board of prisoners confined in jail under their charge shall be for five, or under, one dollar per day for each prisoner, and for over five, eighty cents per day each.

Repeal

SEC. 1076. All acts and parts of acts in conflict with this act, and all acts relating to the board of prisoners, are hereby repealed.

NOTE—Sections 1075 and 1076 are respectively sections 1 and 2 and comprise all of "An act concerning the fees of sheriffs for the board of prisoners," approved March 10, 1887.

14th ses p 107

Fees for transporting prisoners to the penitentiary to be paid by territory

SEC. 1077. For the transportation of persons convicted of a violation of the laws of the territory, and sentenced to confinement in the penitentiary, the sheriff, or other person appointed by the court for the purpose, shall, for said service, receive a per diem of five dollars for the time necessarily employed, and his or their actual, reasonable and necessary expenses. The said sheriff, or other person, shall file a detailed statement, under oath, showing the amount actually paid as such expenses, the time employed in such service, the name of the prisoner transported, the county jail from whence the prisoner or prisoners were transported, and the distance necessarily traveled, and shall accompany his account with vouchers for all sums paid out by him for stage or raiload fare, or team, at the usual rates for himself, his prisoner or prisoners, and guard or guards who are actually and necessarily employed by him. The pay of each guard shall not exceed three dollars per day, and ordinary traveling expenses, which the sheriff shall include in his account. The sheriff may, if necessary, employ one guard for every two prisoners transported by him at the same time from any county jail to the penitentiary, as provided in this chapter; and the territorial auditor shall examine said account of the sheriff, and if he be satisfied that the same is correct, and that the amount of money charged was actually paid, he may draw his warrant on the territorial treasurer for the same.

NOTE.—Section 1077, act of March 10th, 1885.

Fees for board of territorial prisoners in county jails after conviction.

SEC. 1078. The sheriffs of the several counties of this territory shall be entitled to receive for the board of all persons convicted under the laws of this territory and sentenced to confinement in the territorial prison, from and after the day on which sentence is pronounced, until their removal from the county jail, which shall be within five days after the adjournment of the term of court, the sum of one dollar per day, payable by the territorial auditor by warrant on the territorial treasurer, upon the sheriff filing with the territorial auditor his account therefor, stating the name of the prisoner boarded, the date the sentence was pronounced and the date of removal from the county jail, which account shall be verified by the oath of such sheriff.

NOTE 1.—Section 1078 act of March 8, 1883.
NOTE 2.—See Chapter LII.

R. S. p. 531.

Fees of jurors and witnesses.

SEC. 1079. Every juror and witness attending in his own county in any court of record, or before a commissioner or referee, shall receive for such service and attendance, per day, three dollars: *Provided*, That no per diem shall be allowed to special jurors summoned, who shall not serve in the trial of a cause and are not required to remain in attendance on the court.

NOTE.—Act of April 29, 1873.

12th ses. p. 55.

Every juror and witness attending before any probate or justice's court, in obedience to process issued from such court, shall receive for such attendance and service one dollar and fifty cents per day: *Provided*, That no mileage shall be allowed for any distance less than one mile.

NOTE 1.—Last paragraph Act of February 4, 1881.
NOTE 2.—See Chapter LII.

Fees of jurors, in civil cases, by whom paid.

SEC. 1080. That in all civil actions which shall be tried by a jury in the justice court or probate court within this territory, the fees of the jury shall be taxed against the unsuccessful party and collected in the same manner as other costs in the action, and when collected shall be paid to the county treasurer of the proper county by the officer collecting the same.

NOTE 1.—Section 1080 is from "An act to amend an act entitled 'An act concerning fees of jurors in civil cases,' approved February 21st, 1881," approved March 1, 1887, and comprises all of said act, except the introductory clause, as follows: "Section 1. That section 1 of an act entitled 'An act concerning the fees of jurors in civil cases,' approved February 21, 1881, be amended so as to read as follows"

NOTE 2.—See section 519 of first division.

Affidavits of witnesses and jurors.

SEC. 1081. That witnesses in criminal cases before the grand or trial jury, and grand and trial jurors in attendance upon the district courts, shall be paid in the manner following: The county commissioners of each of the several counties shall furnish to the clerk of the district court a printed book of stubs, for affidavit of mileage and time of service of jurors or witnesses, with blank certificate attached bearing a number corresponding to the stub in which to fill out the name of such juror or witness, nature of service and amount due therefor. The stubs in said book shall be numbered consecutively.

Clerk to give certificate.

SEC. 1082. Upon application of any such juror or witness in attendance upon the district court to the clerk of said court, for payment as juror or witness in said court, the clerk shall fill out said affidavit stub, giving the number of miles traveled by said applicant, naming the starting point, the number of days service, with the sums due for each and the total amount due for such mileage and service, which shall be sworn to by said applicant and duly attested by said clerk. The clerk shall thereupon issue to said applicant his certificate corresponding in number to the affidavit stub, and addressed to the county clerk, setting forth the name of the juror or witness, the number of miles traveled, with the sum due therefor, and the nature and number of days service, with the sum due therefor, and the total amount, which certificate shall be signed by said clerk: *Provided*, That if the county commissioners of any county have established a table of distances between the several points of the county and the county seat, the county clerk shall furnish to the clerk of the district court said official table of distances, and the certificate of mileage of jurors or witnesses shall not exceed the distance established by said table of distances.

Order on treasurer.

SEC. 1083. Upon the presentation of the certificate mentioned in this act, to the county clerk, he shall draw his order for the amount stated therein on the county treasurer for its payment.

Orders to be registered.

SEC. 1084. The county clerk shall register all orders issued in pursuance of this act in a suitable book, giving date, number of order, name of payee, nature of service and the amount paid thereon, and shall at each regular meeting of the county commissioners present such record, together with the certificates, for their inspection.

Orders to be paid or endorsed.

SEC. 1085. The orders drawn in pursuance of this act shall be paid out of the general fund, and upon the presentation of any such order to the county treasurer, he shall, if there be money to the credit of said fund, pay the same; but if not, he shall register and endorse the same "not paid for want of funds," and such order shall be paid with interest, as now provided by law for county warrants of like nature.

No fee for affidavit.

SEC. 1086. No fee shall be collected or charged for the affidavit mentioned in this act.

Repeal

SEC. 1087. All acts and parts of acts in coflict with this act are hereby repealed.

NOTE—Sections 1081 to 1087, both inclusive, are respectively sections 1 to 7, both inclusive, of "An act concerning payment of jurors and witnesses in criminal cases in attendance upon the district court," approved March 8, 1887.

Fees of probate judge.

SEC. 1088. The judge of the probate court shall receive the following fees in probate matter: For appointing executors, administrators, guardians, or trustees, one dollar and fifty cents; for granting letters testamentary or of administration, affixing seal thereto, and recording the same, one dollar and fifty cents; administering oath to each executor or administrator, twenty-five cents; for each certificate, one dollar; taking proof of a codicil, credit proved substantially, one dollar; endorsing certificates of probate on codicil, thirty cents; recording any will, codicil, or other paper not herein otherwise provided, per folio, twenty cents; examining and approving each inventory, sale bill, or account current, filed by executor or administrator, one dollar; entering the settlement of executors and administrators on the order book, one dollar. each copy of the settlement of executors or administrators, with certificate and seal, one dollar and fifty cents; for each decree limiting the time for exhibiting the claims of creditors, fifty cents; for each order of distribution, seventy-five cents; for copies of exemplifications of record, per folio, twenty cents; official certificate and seal, seventy-five cents; making out an order for publication, fifty cents; for allowing an appeal to district court, forty cents; for issuing each special writ of summons with seal, one dollar and fifty cents; for administering oath to each witness, twenty-five cents; for swearing any person to affidavit and certificate thereof, fifty cents; issuing subpœna under seal, fifty cents; enter each order, decree of judgment, seventy-five cents; filing paper belonging to the settlement of any estate, twenty-five cents; issuing letters of guardianship or trusteeship, one dollar and fifty cents; taking and approving bond of guardianship or trustee, one dollar and twenty-five cents: taking any bond not hereinbefore specified, one dollar;

revoking letters testamentary, guardianship or trusteeship, one dollar; swearing each jury, forty cents; taking acknowledgments of instruments of writing, one dollar; every original writ under seal not otherwise provided for, fifty cents; precept for jury, fifty cents; taking verdict, forty cents; allowing or disallowing demand against an estate, one dollar; every continuance, fifty cents; deciding each motion, fifty cents; solemnizing marriages, ten dollars; for all civil cases and other than probate matters the same fees as are allowed to clerks of district court in similar cases; for trying each case, three dollars.

NOTE 1.—Acts of May 3, 1873, and February 13, 1874
NOTE 2.—See chapter LII

14th ses p 70

Fees of constables

SEC. 1089. The fees of constables shall be the same as those allowed sheriffs for similar services, but they shall in no case charge or be allowed any fee for attendance on the court, for the entry of any warrant or subpœna, separate and apart from the fee allowed for a return, nor for the discharge of any prisoner, nor shall he be allowed any mileage for any distance traveled less than one mile.

NOTE.—Section 1089 act of March 12th, 1885
See chapter LII

Fees of coroner.

SEC. 1090. That the fees of coroner shall be as follows:

For each day on inquest, five dollars; for all other services, the same fees as are allowed by law to other officers for like services.

NOTE.—Act May 2, 1873

Fees of notary public.

SEC. 1091. That the fees of notaries public shall be as follows:

For noting a bond, bill of exchange or promissory note for protest, one dollar; for each protest and record of same, one dollar; for each notice of protest, one dollar; for each certificate and seal, one dollar; for all other cases, the same as allowed to justices of the peace for like services.

NOTE.—Act May 2, 1873

Fees of masters in chancery

SEC. 1092. The fees of masters in chancery shall be as follows:

For hearing each application for a writ of injunction or other writ, five dollars; for report and opinion in every case referred to him to take proof, five dollars; for taking depositions either in cases referred or to be used in courts, for each one hundred words, including certificates, thirty cents; for the attendance to take depositions at the request of any party, whether depositions are taken or not, per diem, five dollars.

NOTE.—Act of January 12, 1872.

Fees of clerk and recorder

SEC. 1093. In addition to the salary of said clerks and recorders mentioned in the foregoing section they shall be entitled to receive: For filing and recording each instrument of writing allowed by law to be recorded, for first folio, thirty cents; for additional folio, fifteen cents; for each entry in index, ten cents; for each certificate of record of title, fifty cents; for recording marriage certificate, one dollar; acknowledgment certificate and seal, fifty cents; for copies of record, per folio, fifteen cents; abstract of title, first conveyance, fifty cents; for each subsequent conveyance, twenty-five cents; abstracts from original entries, each, fifty cents; for each search of record, twenty-five cents; record of quartz claims, two dollars; for canceling or releasing any mortgage attachment, or other lien, twenty-five cents; for filing each affidavit of brands of cattle slaughtered, twenty-five cents; for recording town plats for each two hundred lots or less, ten dollars; for each additional lot, five cents; for filing and indexing chattel mortgage, lien, attachment or other paper required by law to be filed and indexed, one dollar; for filing and recording each affidavit of lode representation, one dollar; for filing and indexing each annual statement of corporations, one dollar; for filing any paper not herein provided for, twenty-five cents.

NOTE —Sections 1074 and 1093 are from "An act to amend sections 585 and 594 of Chapter XXII. of the fifth division of the Revised Statutes," approved March 10, 1887, and comprise all of said act, except the introductory clause thereof, as follows "Section 1. That sections 585 and 594 of Chapter XXII of the fifth division of the Revised Statutes be amended to read as follows."

R. S. p. 535.

Fees of justice of the peace.

SEC. 1094. Justices of the peace shall receive the following fees for the following services:

Docketing each case, twenty cents; issuing summons, one person, twenty-five cents; each additional person, fifteen cents; order of arrest, twenty-five cents; attachment for contempt, twenty-five cents: issuing attachment for one person, fifty cents; each additional, twenty-five cents; mittimus, fifty cents; writ of replevin, affidavit and bond for same, one dollar; subpœna for one person, twenty-five cents; each additional person, fifteen cents; venire, fifty cents; execution, fifty cents; writ of restitution or re-restitution, fifty cents; warrant for one person, in criminal cases, fifty cents; each additional person, twenty-five cents; order on jailor for person or persons, twenty-five cents; writ of forcible entry and detainer, or forcible detainer, fifty cents; for any other [order] required by law, fifty cents; enter adjournments on docket, twenty-five cents; enter judgment, twenty-five cents;

discontinuance or satisfaction of judgment, twenty-five cents; transfer judgment on docket, twenty-five cents; appointing guardian *ad litem*, twenty-five cents; taking and entering verdict, twenty-five cents; each motion decided by justice, twenty-five cents; making up docket, drawing certificates and affidavits, per folio, twenty cents; each oath administered in case, ten cents; certifying depositions, transcript of docket entries, copies of pleadings, or writings on file, not otherwise provided, per folio, twenty cents; filing each paper required by law, ten cents; taking and approving each bond or undertaking, fifty cents; appointing special constable, twenty-five cents; appointing appraiser, twenty-five cents; certified copies of appraisement, twenty-five cents; acknowledging deeds or other instruments, each person, fifty cents; taking depositions, per folio, twenty cents; entering an appeal, twenty-five cents; transmitting papers on appeal to appellate court, twenty-five cents; for performing duties of coroner, same as coroner; trying each case, two dollars; marrying and making returns as required by law, ten dollars; issuing commission to take testimony in any civil case, one dollar.

NOTE 1 —Act May 1, 1873

NOTE 2.—See chapter LII Also section 1096 of this chapter

14th ses p 88.

Fees of jurors on inquiry into sanity

SEC. 1095. Whenever hereafter a jury shall be impaneled, as provided by law for the purpose of inquiring into the sanity of any person, the following fees shall be allowed to such jurors, to-wit:

To each physician empaneled on such jury, the sum of three dollars per day while engaged in such inquest.

To each person not a physician, impaneled on such jury, the sum of one dollar and fifty cents per day while engaged in such inquest.

NOTE —Section 1095 act of March 12th, 1885

14th ses p. 88

Maximum compensation allowed justices of the peace and constables

SEC. 1096. The maximum amount that shall be allowed to any justice of the peace or constable in any county in this territory by the county commissioners thereof shall not exceed the sum of six hundred dollars per year; and any county commissioner or commissioners who shall allow to any justice of the peace or constable, for official services, a sum in excess of six hundred dollars in any one year shall be liable personally to the county from which such an amount shall be drawn for the excess allowed over and above such amount, to be collected by civil action, in the name of the county, against such commissioner or commissioners, who may be sued jointly or severally. *Provided*, No commissioner shall be liable, as herein provided, if he shall vote against such allowance, and shall cause to be entered on the journal of proceedings of the county commissioners at the time of such allowance his vote and protest against such allowance; and it is made the duty of the clerk of the board to so note such protest when so requested by any commissioner. Nothing in this section shall be construed to permit any board of county commissioners to allow any justice of the peace or constable any greater or other compensation than that provided by law; but if the fees and compensation of any justice of the peace or constable, allowed by law, and for which the county is chargeable and responsible, shall exceed the sum of six hundred dollars, then such compensation shall be limited to six hundred dollars, and in no case shall exceed such sum.

NOTE.—Section 1096 act of March 12, 1885.

List of fees.

SEC. 1097. Each officer in this territory receiving any fees shall cause a list thereof, specifying each item, and the sum allowed by law for each, to be posted in his office.

Fees to be endorsed on return.

SEC. 1098. No officer serving any process shall be entitled to any fees for the same, unless he returns on such process the amount of his fees, and the items thereof, and charge for each.

Certified bill of costs

SEC. 1099. Any person liable for any costs or fees shall be entitled to receive, on demand, a certified bill of the same, in which the items of service, and the charges therefor, shall be specifically stated.

Receipt for fees

SEC. 1100. Every officer charging fees shall, if required by the pdrson paying the same, give a receipt for the same, setting forth the items, the date of each, and the sum charged therefor.

NOTE.—Act of May 8th, 1873.

CHAPTER LXII.

MISCELLANEOUS PROVISIONS.

Sec. 1101. Mileage of justices of supreme court.
Sec. 1102. Fees due a county from attached county.
Sec. 1103. Unclaimed fees to be paid into the county treasury.
Sec. 1104. Duty of officer paying fees into the treasury.
Sec. 1105. Duty of treasurer on receipt of same.

Sec. 1106. Duplicate receipts for same to be filed.
Sec. 1107. Penalty for violation of four preceding sections.
Sec. 1108. Term "folio" defined.
Sec. 1109. Discretionary powers of commissioners in allowing fees.
Sec. 1110. Void claim of county commissioner.

Mileage allowed to justices of supreme court

SEC. 1101. That whenever a court is appointed by the supreme court of the territory, or the justices thereof, or a majority of them, to be holden in any county of either of the districts of the territory where causes are not heard which arise under the constitution and laws of the United States, and in which the justice assigned to said district does not reside, it shall be the duty of the board of county commissioners of such county, in which such term is appointed to be held, to pay to the chief justice or associate justice so holding said term, mileage, at the rate of twenty cents per mile in going from his residence to the place where said court is held and returning therefrom, as his expenses incurred for, and on account of travel incurred for the benefit of such county, and to cause to be issued to such chief justice, or associate justice, then presiding, a warrant for said amount, to be drawn on the general fund of said county.

County attached to another for judicial purposes to pay part of public expenses

SEC. 1102. Whenever a term of the district court shall be held in any county in this territory, and another county is attached to such county for judicial purposes, at the close of each term it shall be the duty of the justice presiding at such term to make an inquiry as to what share of the public expense of such term was incurred for, and on account of, the county or counties so attached, or litigants therefrom, and to apportion the same, and to make an order directing the reimbursement to the county incurring such expense, by the county so attached; and it shall be the duty of the board of county commissioners of the attached county to draw their warrants on the treasurer of their county, out of their general fund, payable to the county commissioners of the county incurring said expense, and to forward the same to the treasurer of the county, who shall make report thereof to the board of county commissioners of his county so soon as the same shall be received; and the said warrants shall be paid in due course, as is provided by law; and the said district court is authorized to make any and all necessary orders for carrying this section into effect as equality and justice may require.

NOTE—Sections 1101 and 1102 are from act of February 21, 1879.

Unclaimed fees to be paid into county treasury

SEC. 1103. That it shall be, and it is hereby made the duty of the respective clerks of the district courts, probate judges and justices of the peace, sheriffs or other officers, to pay into the county treasury of their county all money by them received for witness and jury fees, and remaining unclaimed for three months after the receipt of the same.

Duty of officers paying fees into treasury

SEC. 1104. The said clerk, probate judge or justice of the peace, sheriff or other officer, shall, at the time of making such payment, deliver to the treasurer a statement of the case, the names of the witnesses or jurors, and the amount each one is entitled to receive. And such officer so paying said fees into the treasury shall notify the clerk of the court, probate judge or magistrate having the custody of any judgment on which the same are paid, in writing, of the payment thereof; and such clerk, probate judge or magistrate shall endorse the same as paid upon the judgment so in his charge.

Duty of treasurer on receipt of fees.

SEC. 1105. The treasurer of said county shall keep the money thus received separate from the general fund of the county for one year, if not paid out to the person entitled to receive the same before said time, upon the certificate of the district clerk, probate judge or justice of the peace, sheriff or other officer, as the case may be, after which the same shall be credited to the general county fund.

Duplicate receipt.

SEC. 1106. Any officer paying money into the county treasury under the provisions of sections 1103, 1104 and 1105 shall take a duplicate receipt therefor one of which he shall file in his office and the other he shall file with the clerk of the board of county commissioners, who shall charge the amount thereof to the treasurer.

Penalty for violation

SEC. 1107. Any failure to pay over to the county treasurer witness or jury fees, as contemplated by the four preceding sections, shall subject the offender to a fine, for each offence, of not less than one hundred dollars nor more than five hundred dollars, to be collected in any court having jurisdiction, and disposed of as other fines.

NOTE.—Sections 1103 to 1107, inclusive, are from act of February 11th, 1876

Term folio defined.

SEC. 1108. That the term "folio," as used in acts relating to regulation of fees, shall be construed to mean one hundred words, counting two figures as one word, and any portion of a folio, where the whole paper shall contain less than a folio, or where such portion shall be in excess over the last folio, shall be deemed a folio.

NOTE—Act April 29th 1873

Duty of commissioners as to allowance of fees

SEC. 1109. That the county commissioners of the several counties of this territory, when any bill of costs of any justice of the peace, constable, marshal, sheriff, or other officer of this territory, or of any county, township or precinct therein is presented to them for fees in any case of misdemeanor not prosecuted by indictment, for allowance, shall not allow the same, unless in their judgment it appeared at the time such cause was commenced and prosecuted, and said fees incurred to said officers, that the public welfare and the good order and the peace of the territory would be promoted by such prosecution; nor shall they, in any event of conviction, allow any fee or cost of any officer out of the public funds until they are satisfied that every reasonable effort has been exhausted to collect such fees out of the estate of the defendant, or defendants, convicted.

NOTE—Act of February 13th, 1874

Certain claims declared void

SEC. 1110. No county commissioner, or other auditing officer, shall acquire, in any manner, against any corporate municipality, or against the territory, any claim, except for official compensation fixed by law, when such claim is one which is to be audited by the board, or body, or office which he holds, or of which he is a member, but in the hands of such person, or his assignee, or partner therein, the same shall be wholly void.

NOTE—Act of February 13, 1874

CHAPTER LXIII.

FENCES.

Sec. 1111. Legal fences defined.
Sec. 1112. Penalty for violation.
Sec. 1113. Barbed wire fences to be kept in repair.
Sec. 1114. Partition fences.
Sec. 1115. Partition fences to be maintained at joint expense.
Sec. 1116. Fence when joint occupancy ceases.
Sec. 1117. When partition fence removed.
Sec. 1118. Repairs of partition fences.
Sec. 1119. Liability of owners of stock for trespass.

Sec. 1120. Stock trespassing may be retained.
Sec. 1121. Penalty for maliciously leaving gate to any enclosure open.

Legal fences defined.

SEC. 1111. The following shall be deemed legal and sufficient fences, provided they shall not be less than four and one-half feet in height:

First. All fences constructed of at least one strong pole, rail or board and three of either barbed wires or strong poles, rails or boards, or both, so that there be three altogether thereunder, which lower three, whether all barbed wires or poles, rails or boards and barbed wires may be arranged at the pleasure of the builder; but all shall be firmly fastened as nearly equidistant as practical, to substantial posts firmly set in the ground not more than twenty feet apart, or to well supported substantial leaning posts, not more than twenty feet apart; *Provided*, That the lower pole, rail, board or barbed wire be not more than one foot and a half above the ground.

Second. All fences constructed of at least four barbed wires, the lowest of which shall not be more than one foot and a half above the ground securely fastened as nearly equi-distant apart as practicable to substantial posts firmly set in the ground, at a distance not exceeding thirty feet apart with pickets at least five feet in length, interwoven in or fastened to said wires, between each two of said posts in such manner that there shall not be more than five feet space between such pickets or posts and pickets.

Third. All substantial worm fences and stone walls.

Fourth. All rivers, hedges, mountain ridges and bluffs, or other barriers, which may be impossible for stock to pass through or over; *Provided*, That none of the fences hereinbefore described shall be deemed legal and sufficient for stock-yards, or places where either grain, hay or straw is kept, but such place shall be fenced by a fence at least six feet high, constructed of one strong pole, board or rail, with at least five of either strong rails, poles or boards or barbed wires thereunder, securely fastened, as nearly equi-distant apart as practical to substantial posts, firmly set in the ground, not more than fourteen feet apart.

Penalty for violation.

SEC. 1112. Any person, firm or corporation constructing or maintaining any fence of any character not described in section 1111, of this act, shall be liable in a civil action for all damages caused by reason of injury to stock, resulting from such defective fence.

NOTE.—Sections 1111 and 1112 are respectively as amended by sections 1 and 2 of "An act to amend an act entitled 'an act concerning fences,' approved March 10th, 1885", approved March 3d, 1887, and comprises all of said act except the introductory clauses to said sections 1 and 2, the first of which is as follows. "Section 1. That section 1 of an act entitled an act concerning fences, approved March 10th, 1885, be and the same is hereby amended so as to read as follows," and the second of which is as follows. "Section 2. That section 2 of said act be, and the same is hereby amended so as to read as follows,"

SEC. 1113. It shall be the duty of the owners of barbed wire fences to keep the same in repair, and any person receiving notice in writing, that his barbed wire fence or any part thereof is down, or in such condition, as to be liable to injure any live stock, and who fails or refuses to repair such fence shall be liable to pay damages in an amount double the value of any horse, mule, or other domestic animal which may be injured by coming in contact with such fence. The owner of the animal so injured may recover the damages mentioned in this section, in any court of competent jurisdiction.

Owner of barbed wire fences to keep same in repair; penalty

NOTE.—Section 1113 is section 1, and comprises all of "An act to require owners of barbed wire fences to keep the same in repair," approved March 10th, 1887.

SEC. 1114. The respective occupants of adjoining lands enclosed with fences shall build and maintain partition fences between their own and the next adjoining enclosure in equal shares, so long as both continue to enclose the same; and such fences shall be kept in good repair throughout the year, unless the occupants of the land on both sides shall otherwise mutually agree.

12th ses. p. 47.

Partition fences

SEC. 1115. If any occupant of land adjoining the enclosure of another shall enclose the same, upon the enclosure of such other person, he shall, within three months thereafter, build his proportion of such partition fence, or refund to the owner thereof an equal proportion of the value, at that time, of any partition fence of such adjoining occupant.

12th ses. p. 47.

Adjoining occupant shall pay his part of partition fence

SEC. 1116. Whenever any lands belonging to different persons in severalty, shall have been enclosed and occupied in common, or without a partition fence between them, and one of such occupants shall desire to occupy his part in severalty, the other occupant or occupants shall, within six months after being notified thereof in writing, build and maintain his or their proportion of such partition fence as may be necessary for that purpose; and in case of neglect or refusal so to do, the person giving such notice may build such fence at the expense of the person so

Same

neglecting or refusing, to be recovered in an action together with all damage he may sustain on account of such neglect or refusal.

How partition fence may be removed.

SEC. 1117. If the occupants of adjoining lands have heretofore built, or shall hereafter build their respective portions of a partition fence, and either of them shall at any time desire to suffer the land occupied by him to lie open, he may, after having given notice to the occupant or occupants of the adjoining land at least six month's notice of his intention so to do, remove his proportion of such partition fence, unless such adjoining occupants shall pay or tender to him the value thereof; and if such fence shall be removed without such notice, or after payment or tender of the value as aforesaid, the person removing the same shall be liable to the person injured for all damage he may sustain thereby.

12th ses. p. 47.

Cost of building partition fence may be recovered.

SEC. 1118. In case any person shall neglect to repair or rebuild any partition fence which by law he ought to build or maintain, the occupant of the adjoining land may. after giving sixty days' notice that a new fence should be erected, or five days' notice, in writing, that the repairing of such fence is necessary, build or repair such fence at the expense of the party so neglecting or refusing, to be recovered from him, with costs of suit, in any court of competent jurisdiction; and the party so neglecting or refusing, after receipt by him of the notice above provided, shall be liable to the party injured for all damages he may sustain thereby.

Damages for injury by trespassing animals

SEC. 1119. If any horse, mule or ass, or any neat cattle, hogs or sheep, or other domestic animals, shall break into any enclosure, the fence being legal and sufficient, as hereinbefore provided, the owner of such animal or animals shall be liable to make good all damages to the owner or occupant of the enclosure which may be sustained thereby. This section shall not be construed to require such fence in order to maintain an action for injury done by animals running at large contrary to law.

Possession of trespassing animals may be kept until damages are paid.

SEC. 1120. If any such animal or animals shall break into an enclosure surrounded by a legal and sufficient fence, as hereinbefore provided, or shall be wrongfully upon the premises of another, the owner or occupant of such enclosure or premises may take into his possession such animal or animals trespassing, and keep the same until all damages, together with reasonable charges for keeping and feeding, and all costs of suit, be paid, to be recovered in any court of competent jurisdiction; and any person who shall take or rescue any such animal so taken from the possession of the person in whose custody the same may be, without his consent shall be liable to a fine of not less than five nor more than twenty-five dollars for each of the animals so rescued, to be recovered on complaint before any justice of the peace of the county where such offence shall be committed: *Provided*, That within twenty-four hours after taking such animal or animals into his possession he shall give notice to the owner thereof, if known, or if unknown, he shall post notices at some public place near the premises.

12th ses. p 48.

Penalty for leaving gate open.

SEC. 1121. Any person who shall knowingly, willfully, and maliciously, leave open any gate leading into or out of any enclosed premises, whether enclosed by a lawful fence or not, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not exceeding twenty-five dollars, or by imprisonment in the county jail not exceeding thirty days, or by both such five and imprisonment.

NOTE —Sections 1115 to 1121, inclusive, act of Feb 23d, 1881

CHAPTER LXIV.

TERRITORIAL FINANCES, BONDS, WARRANTS, ETC.

Sec. 1122. Auditor empowered to issue warrants to persons; legislature may direct.
Sec. 1123. How auditor to pay warrants.
Sec. 1124. When warrants may be less than five dollars.
Sec. 1125. Form of warrants.
Sec. 1126. Warrants to be received for taxes and licenses.
Sec. 1127. Sheriff and collector not allowed to deal in warrants.
Sec. 1128. Auditor to make estimate and report to legislature.
Sec. 1129. Territorial warrants to draw six per cent. interest.
Sec. 1130. Auditor prohibited from issuing warrants, except by express provision of law.
Sec. 1131. Guilty of misdemeanor for violation of foregoing section.
Sec. 1132. The word "original" to be written on face of original bond or warrant.
Sec. 1133. Duplicate bond or warrant may be issued.

Sec. 1134. *Security to be given on the issue of a duplicate.*
Sec. 1135. *The word "duplicate" to be written on duplicate bond or warrant.*
Sec. 1136. *The words "original" or "duplicate" impart notice.*
Sec. 1137. *On production of original bond security to be assigned to holder thereof.*
Sec. 1138. *When duplicate to be issued.*

To whom auditor may issue warrants

SEC. 1122. That the auditor of the territory is hereby empowered to issue territorial warrants, drawn upon the treasury of the territory, in favor of all persons to whom the legislative assembly of the territory may direct.

Payment of warrants.

SEC. 1123. That the treasurer shall pay out of any funds in his hands applicable to such use, the amount stated as due in the auditor's warrants only, in the order in which they are drawn, according to priority of date: *Provided*, That all warrants are receivable into the treasury in payment of any taxes, licenses or other dues due the territory, and all warrants bearing date the same day bear equal priority, and shall be paid in the order in which they are presented for payment.

May issue warrants in sums desired.

SEC. 1124. The auditor shall issue his warrants on the treasurer in any sum that the party entitled to the same may desire: *Provided*, That they shall not be less than five dollars, unless the sum due is less than that amount.

Form of warrant

SEC. 1125. The form of the warrants of the auditor, drawn on the treasurer for the payment of money, shall be as follows:

Warrant No. . . . . TERRITORY OF MONTANA,
County of . . . . . .
. . . . , 18

The treasurer will pay to . . . . , or order, ... $\frac{}{100}$ dollars, out of the money in the treasury not otherwise appropriated.

. . . .
Territorial Auditor.

$. . . . .

Presented for payment . . . . , 18
. . . . ,
Territorial Treasurer.

One-fourth of taxes may be paid in warrants.

SEC. 1126. From and after the passage of this chapter, one-fourth of all taxes and licenses due this territory, or any county thereof, may be paid in warrants, and three-fourths (the balance) shall be paid in money.

SEC. 1127. No sheriff or collector of the revenue shall buy, purchase, trade for or in any manner deal in the warrants drawn by the auditor, except at their par value; and for every offence committed against the provisions of this article shall be fined in any sum not exceeding five hundred dollars.

Sehriff or collector not to deal in warrants.

SEC. 1128. That each year the auditor shall make an estimate of the probable amount of revenue derivable from the various sources and report the same to the legislative assembly of the territory, by which they may be governed in their appropriations, and that every warrant shall be canceled or paid in its own fiscal year out of the sums in the hands of the treasurer, and that no warrants shall be issued over and above the estimate of said auditor, duly reported to the legislative assembly.

Auditor to make estimate.

SEC. 1129. That all territorial warrants issued by the proper authorities of this territory, after the first day of March, A. D. 1881, shall draw interest at the rate of six per centum per annum from and after the date of their presentation until there are funds to pay said warrants in the hands of the terrritorial treasurer.

12th ses. p 84

Interest on warrants

NOTE—Section 1129 act of February 7, 1881.

SEC. 1130. The territorial auditor of this territory is hereby forbidden to issue any warrant in favor of any person, drawing upon the territorial treasurer for any sum, unless he is authorized by law expressly, in which the name of the party shall be specified, the nature of the service performed, and the amount specified for the performance of such service.

No warrant unless authorized by express law

SEC. 1131. That in case the territorial auditor shall issue any warrant in favor of any person, contrary to the provisions of the preceding section of this chapter, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, in any court of competent jurisdiction in this territory, shall be fined in a sum not less than one thousand dollars, nor more than five thousand dollars, to be collected as in other cases provided by law, and shall forfeit all rights to hold or enjoy office in this territory.

Penalty

NOTE—Act January 12, 1872

SEC. 1132. It shall be the duty of the territorial auditor at the time of issuing any original warrant or bond, to cause to be written or printed upon, or across the face of such bond or warrant, the word "original" with red ink, in a conspicuous manner.

Original warrant

—61

Duplicate warrant.

SEC. 1133. The territorial auditor is hereby authorized and empowered, upon satisfactory proof that any original territorial bond, warrant or coupon has been lost or destroyed, to issue to the owner or holder of such bond, warrant or coupon, a duplicate thereof, which shall take the place in order of registration and payment of such original bond, warrant or coupon, and shall in all cases supersede and take the place of such original.

Indemnity bond.

SEC. 1134. Before issuing such duplicate bond, warrant or coupon, the auditor shall require the person or persons demanding the same, to execute and deliver to him a bond to the Territory of Montana, payable to whomsoever it may concern, in at least double the amount of the duplicate bond, warrant or coupon, with at least two good and sufficient sureties, who shall be required to justify as in cases of attachment, the condition of such bond being that the principal and sureties therein will indemnify and save harmless the Territory of Montana from all loss, cost or damage, by reason of the issuing of such duplicate, and will pay to any person entitled to receive the same, as the lawful holder of the original bond, warrant or coupon, all moneys received upon such duplicate.

Duplicate to be endorsed

SEC. 1135. The auditor, at the time of issuing any duplicate bond, warrant or coupon, shall write upon or across the face thereof the word "duplicate," with red ink, in a conspicuous and legible manner.

Notice.

SEC. 1136. The word "original" or "duplicate" upon any bond, warrant or coupon, as provided in section 1132 of this chapter, shall impart notice to all persons that the same is issued and payable, subject to the provisions of this article.

Action upon bond.

SEC. 1137. It shall be the duty of the territorial auditor, upon production to him of any original bond, warrant or coupon, by the lawful holder or owner thereof, to assign by endorsement, and deliver to him the bond mentioned in section 1134 of this chapter, and such owner or holder may maintain an action in his own name, upon such bond, for the recovery of any moneys paid upon such duplicate.

Duplicate of warrant heretofore lost.

SEC. 1138. In case any territorial bond, warrant or coupon, issued prior to the passage of this act, shall be lost or mislaid it shall be the duty of the auditor, upon satisfactory proof thereof, and the execution and delivery of a bond in the manner and conditioned as provided in section 1134 of this chapter, to issue a duplicate thereof, which duplicate shall take the place in order of registration and payment, of such lost or mislaid bond, warrant or coupon, and the provisions of this chapter shall apply thereto.

NOTE—Act January 6, 1872.

CHAPTER LXV.

FIRE WARDEN.

Sec. 1139. Appointment of and duties of fire warden.

Sec. 1140. Dangerous chimneys, etc., to be removed, etc.; penalty for violating.

Appointment and duties of fire warden.

SEC. 1139. That the county commissioners of every county in this territory shall, upon petition from ten residents of any unincorporated city, town or village in their respective counties, appoint a fire warden for said city, town or village, as the case may be, whose duty it shall be to examine all chimneys, stoves, stove-pipes, ovens, furnaces, boilers, and appurtenances thereto belonging.

12th ses. p. 49

Dangerous chimneys, etc., to be removed.

SEC. 1140. When any chimney, stove, stove-pipe, oven, furnace, boiler, or appurtenance thereto belonging, are defective, out of repair, or so placed in any building as to endanger it or any other building by communicating fire thereto, the fire warden, on complaint of any citizen, either orally or in writing, or upon his own examination, or other satisfactory proof, shall give written notice to the owner or occupant of such building or premises, directing said owner or occupant to repair such chimney, stove, stove-pipe, oven, furnace, boiler, or appurtenance thereto, so as to make the same effectually secure against accident by fire; and said fire warden may in said notice require said owner or occupant to replace with a substantial brick chimney any defective flue, stove-pipe, or other means of escape usually provided for the products of combustion; and if the said occupant or owner shall neglect for the space of three days to comply with the terms of said notice he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten dollars, nor more than one hundred dollars; and the court taking cognizance of the case may order, at any time after such conviction, that the said defective flue, chimney, stove, stove-pipe, oven, furnace, boiler, or appurtenance may be removed, or that no fire shall be maintained therein until

Penalty for violation.

the directions of the fire warden concerning the same shall be fully complied with; and any person who shall violate the order of the court so made shall be deemed guilty of a contempt, and shall be punished as provided by law for the punishment of contempt.

NOTE.—Section 1140, act of February 18th, 1881.

CHAPTER LXVI.

FREE PUBLIC LIBRARIES.

Sec. 1141. Municipalities may maintain one free public library.
Sec. 1142. Proposition for establishing library to be submitted to the vote of electors.

13th ses. p. 110

Municipality may maintain free public library.

SEC. 1141. The municipal authorities of any town or city, which is now or may hereafter be incorporated under the laws of this territory, shall have power to establish and maintain one free public library for the use of the citizens of such town or city, and to that end, and for that purpose, may provide by ordinance for the levy and collection of a tax of not exceeding one mill on the dollar on all taxable property within the corporate limits of such town or city. The city treasurer shall preserve the tax so collected in a fund by itself, to be known as the "Library Fund," and the same shall only be expended for the purchase of books, equipments, and support and maintenance of such public library.

Election.

SEC. 1142. Before any ordinance for the establishment of a public library, or the levy and collection of a library tax, shall have any force or validity, it shall first be submitted to the qualified electors of the town or city in which it is proposed to found such library. At such election the ballots shall have printed or written thereon the words "For public library," or "Against public library:" and if a majority of the votes cast at such election shall be in favor of such public library, then the ordinance establishing the same, and levying a tax therefor, shall become operative and be in full force; but if a majority be against the establishment of such library, then the ordinance shall remain suspended, and shall not take effect, unless thereafter, upon a petition signed by thirty or more citizens of said town, the municipal authorities re-submit said library ordinance at some regular municipal election thereafter held, and the same is approved by a majority of all the votes cast at such election. The city council of such town or city shall have full power to alter or amend said ordinance in any particular during the time the same is suspended, and to re-submit such altered or amended ordinance.

NOTE—Chapter LXVI act of March 5th, 1883.

CHAPTER LXVII.

PROTECTION OF GAME, FUR-BEARING ANIMALS, BIRDS AND FISH.

Sec. 1143. Penalty for killing large game out of season.
Sec. 1144. Penalty for killing at any time for hide and head.
Sec. 1145. Penalty for hunting with dogs at any time.
Sec. 1146. Penalty for killing certain fur-bearing animals out of season.
Sec. 1147. Penalty for killing certain birds out of season.
Sec. 1148. Unlawful killing of wild geese and ducks.
Sec. 1149. Penalty for killing wild singing birds.
Sec. 1150. Destroying nests or eggs of singing birds prohibited.
Sec. 1151. Possession of dead bodies of animals or birds evidence of the killing.
Sec. 1152. What constitutes a fishing tackle—Where seine may be used—Drugs.
Sec. 1153. Transportation or sale of illegally captured fish prohibited.
Sec. 1154. Disposition of fines collected under this chapter.
Sec. 1155. Duties of courts and grand juries.
Sec. 1156. Sawdust to be prevented from mingling with water of streams.
Sec. 1157. Protection of quail.
Sec. 1158. Removal of obstructions from Pon d' Oreille river.

Penalty for killing large game in certain seasons

SEC. 1143. That any person or persons who shall wilfully shoot, or otherwise kill, or cause to be killed, any buffalo, moose, elk, white-tailed deer, black-tailed deer, mountain sheep, Rocky mountain goat or antelope between the first day of December and the fifteenth day of August of the ensuing year shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than twenty dollars nor more than fifty dollars for each offence committed.

NOTE.---See note to section 1147.

Penalty for killing such game for speculative purposes.

SEC. 1144. That any person or persons who shall wilfully shoot, or otherwise kill, or cause to be killed, at any time, any of the animals mentioned in section one of this act, for the purpose of procuring the head or hide only, or for speculative purposes, or for market, or for sale, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than fifty nor more than two hundred dollars, or by imprisonment in the county jail not less than one month nor more than six months, or by both such fine and imprisonment.

NOTE —See note to section 1147.

13th ses. p. 103

Penalty for hunting with dogs.

SEC. 1145. That any person or persons who shall wilfully hunt, chase, hound or run with dogs any of the animals mentioned in section one of this act, at any season or time of year, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten dollars nor more than twenty-five dollars for each offence committed *Provided*, That it shall not be deemed a violation of the provisions of this act to use dogs to capture any of the animals mentioned in section one after they have been wounded.

Penalty for killing fur-bearing animals in certain seasons.

SEC. 1146. That any person or persons who shall trap, shoot or otherwise kill, or cause to be killed, any beaver, otter, martin or fisher between the first day of April and the first day of October of each year, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten dollars nor more than twenty-five dollars for each offence committed: *Provided*, That nothing contained in this section shall prevent persons from catching or killing beaver on their own lands.

Penalty for birds in certain seasons.

Sec. 1147. That any person or persons who shall wilfully shoot or kill, or cause to be killed, any grouse, prairie chicken, pheasant, fool hen, sage hen, partridge or quail between the fifteenth day of November and the fifteenth day of August of the next ensuing year shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than twenty-five dollars nor more than fifty dollars, and all persons are hereby prohibited at all times from killing any of the birds in this section for speculative purposes, or for market, or for sale, and any person or persons who shall hereafter kill for speculative purposes or offer for sale any of the kinds named in this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than twenty-five dollars nor more than fifty dollars for each offence committed.

Not to kill at any time for speculative purposes

NOTE—Section 1143, 1144 and 1147 are from "An act to amend sections 1, 2 and 5 of an act entitled an act "To protect game, fur-bearing animals and fish, approved March 8, 1883," approved March 9, 1887, and comprise all of said act, except the introductory clauses to sections 2 and 3, the first of which is as follows "Section 2 That section 2 of an act entitled 'An act to protect game, fur-bearing animals and fish,' approved March 8, 1883, be amended to read as follows", and the second of which is as follows. "Section 3 That section 5 of said act be amended to read as follows"

Killing geese or ducks.

SEC. 1148. That any person or persons who shall wilfully shoot, or kill, or cause to be killed any wild geese or wild ducks between the first day of May and the fifteenth day of August of each year shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten dollars nor more than twenty-five dollars for each offence committed.

Killing singing birds.

SEC. 1149. That any person who shall wilfully shoot, or otherwise kill, or in any manner whatever cause to be killed, any robin, meadow lark, thrush, flecker or yellow hammer, oriole, mocking bird, gold finch, snow bird, cedar bird or any other of the small birds known as singing birds shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than five nor more than ten dollars for each offence committed.

Destroying nests

SEC. 1150. That any person who shall wlifully destroy the nests, or carry away the eggs from the nests of any of the birds or wild fowl mentioned in this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than five dollars nor more than ten dollars for each offence committed.

13th ses p. 105

Evidence.

SEC. 1151. That the possession of the dead bodies, or any part thereof, of the animals or birds mentioned in this act, shall be taken as *prima facie* evidence that such person or persons is or are guilty of killing the same.

14th ses. p. 84

What methods of fishing prohibited

SEC. 1152. That a fishing tackle consisting of a rod or pole, line and hook, or spear shall be the only lawful way that fish can be taken in any of the streams, lakes, or ponds of this territory. It shall, however, be lawful to use a seine in the Missouri river, below the Three Forks, and in the Yellowstone river below the mouth of Clarke's Fork. That said hook shall not be baited with any poisonous drug or substance, and that it shall be unlawful for any person or persons to make any dams or use any fish traps, seines, or similar means for catching fish, or to use any drugs or poison or giant powder, or other explosive compound, intending to catch, kill, or destroy fish of any species; *Provided*, That it shall not be unlawful to use a seine or net for the purpose of taking fish to transplant into or stock other streams, lakes, or ponds, or for the purpose of taking minnows or small fish for bait for hook; and any person or persons, company or corporation, offending against this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than fifty dollars nor more than two hundred and fifty dollars or shall be imprisoned for a period not less than thirty days nor more than six months, and shall pay the costs of prosecution.

NOTE.—Section 1152 act of March 12th, 1885

13th ses p 105

Penalty for transporting fish illegally caught.

SEC. 1153. Any person or persons, agent or employe of any stage or express company, or railroad company, or association of persons, who shall receive for transportation or carriage, or shall sell, or offer for sale, fish that have been caught, taken, or killed, contrary to the provisions or this act, knowing, or having reason to believe, that such fish were so illegally caught, taken or killed, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten dollars, nor more than twenty-five dollars for each lot or shipment of fish so transported or carried.

Disposition of fines.

SEC. 1154. That all fines and penalties mentioned in any section of this act may be collected by a civil action in the name of the Territory of Montana, in any court of competent jurisdiction, upon a proper complaint being filed in the cause; one-half of all fines so collected shall be paid into the county treasury of the county in which the offence was committed for the benefit of the common schools of said county, and one-half of all fines so collected shall be paid to the person or persons making complaint of the commission of such offence. All such fines and costs shall be collected without stay of execution, and such defendant or defendants may, by order of the court, be confined in the county jail of such county until such fine and costs are paid; *Provided, however*, If the jury, justice of the peace, magistrate, or judge, before whom such complaint shall be tried, shall certify by their verdict, or any order of court, that there was no probable cause to believe the defendant or defendants guilty, then, in that case, the complainant shall pay all costs which have accrued in the case.

SEC. 1155. It shall be the duty of all grand juries to investigate all infractions of any provision or provisions of this chapter, except such cases and infractions as may have been tried by a court of competent jurisdiction, and, upon due proof of the violation of any of the said provisions, they shall proceed to indict such party or parties, according to law; and it is hereby made the duty of the court to call the attention of each grand jury to the provisions of this chapter. The district court shall have concurrent jurisdiction with the probate court of all offences committed under the provisions of this chapter; *And be it further provided*, That in construing this chapter, the provisions and penalties hereinbefore made and prescribed shall be deemed and held to include all Indians and half-breed Indians, when outside of an Indian reservation.

14th ses p 83

Duty of courts and grand juries

Applicable to half-breeds and Indians

NOTE 1 —Section 1155 act of March 8th, 1885

NOTE 2 —Sections 1143 to 1155, inclusive, except where otherwise specially noted, act of March 8th, 1883

SEC. 1156. All persons having in operation, and all persons who may hereafter construct and put in operation, in the territory of Montana, either in person or by agent, any saw-mill on any stream containing fish, are hereby required to so care for any sawdust that may emanate from any such saw-mill or saw-mills, as to prevent the same from mingling with the waters of any such stream. And all persons owning or operating, or who may hereafter own, construct, or operate any saw-mill on any stream containing fish, who shall drop, dump, or cart, or cause to be deposited in such stream any such quantity of sawdust, bark, or debris, shall be deemed guilty of a misdemeanor, and, upon conviction thereof before any court of competent jurisdiction, shall be fined in any sum not exceeding fifty dollars for each and every offense.

14th ses. p 121

Penalty for putting sawdust in fish-bearing stream

NOTE —Section 1156, act of March 12th, 1885

SEC. 1157. It shall be unlawful for any person to kill by fire-arms, or other means, any quail in this territory which have been turned loose for the purpose of propagation and domestication, or to kill the increase of such quail, for the term of six years from and after the passage of this act. Any person violating the provisions of this act shall be punished by fine not exceeding twenty-five dollars; and the possession of a dead quail shall be presumptive evidence that the person having it in possession killed the same, in violation of this section.

14th ses. p. 110

Penalty for killing quail.

NOTE —Section 1157, act of March 12, 1885.

Ex. ses p 7.

Appropriation for removal of portion of Great Falls of Clarke's Fork.

SEC. 1158. There is hereby appropriated out of the territorial treasury the sum of one thousand dollars, to be expended so soon as the consent of the territory of Washington can be obtained to the expenditure herein contemplated, under the direction and authority of the governor of this territory, in the removal of a portion of the Great Falls, on Clarke's fork of the Columbia river, sometimes called Pen d' Orielle, to enable the salmon fish to reach the upper waters thereof, in the Territory of Montana. And upon the requisition of the governor of this territory, the auditor of said territory is hereby authorized and required to draw his warrant on the territorial treasurer for the sum of one thousand dollars, or so much thereof as may be expended, in favor of the governor of said territory, to be paid out of any money in the territorial treasury not otherwise appropriated; and it shall be the duty of the governor of the territory to report to the next legislative assembly of the territory, after expending any money hereby appropriated, the amount of money so expended and the results thereof.

NOTE 1.—Section 1158, act of July 22d, 1879.

NOTE 2.—For statutes for protection of bison, or buffalo, in certain counties in this territory, see section 270, fourth division, "Criminal Laws."

CHAPTER. LXVIII.

BOUNTY FOR KILLING CERTAIN ANIMALS.

Sec. 1159. Amount of bounty to be paid; method of procedure, etc.
Sec. 1160. Record to be kept by county judge or justice of the peace.
Sec. 1161. Duty of territorial auditor.
Sec. 1162. Penalty for forging certificate.
Sec. 1163. Penalty for attempt to defraud.

13th ses p. 109

Amount of bounty to be paid for killing certain animals; method of procedure, etc.

SEC. 1159. From and after the passage of this act there shall be paid out of the territorial treasury for the killing of the animals hereinafter mentioned, slain, killed or caused to be killed in said territory the following bounties, viz:

For each bear, three dollars.
For each mountain lion, three dollars.
For each wolf, two dollars.
For each cayote, one dollar.

Provided, That this act shall not apply to any of the above named animals that are killed or caused to be killed within the limits of any Indian reservation or National park: *And provided further*, That any person killing or causing to have been killed, any one of the above named animals shall, within thirty days from the date of killing said animal or animals, exhibit the entire skin of said animals, including the tail and the skin from the forehead, embracing and including the ears of each animal, to any probate judge or acting justice of the peace within the county in which the said animal or animals were killed or caused to be killed, and shall file his affidavit with the said officer, setting forth that affiant killed or caused to be killed the animal or animals from which the skin or skins were taken, and that the same were killed or caused to be killed within the bounds of the county in which the application for the certificate is made, and were not killed or caused to be killed within the limits of any Indian reservation or National park; and the said probate judge or justice of the peace shall, before issuing any certificate to any person or persons for killing any of the above mentioned animals, require the affidavit of two respectable freeholder residents of said county, that to the best of their knowledge and belief they were killed or caused to be killed within the limits of said county, and not upon any Indian reservation; and the said probate judge or justice of peace, as the case may be, shall minutely examine each skin presented in order to prevent fraud, and should said officer, after careful examination, find that the scalp and ears belonging to each skin have not been severed, patched or punched, he shall then and there mark each ear by punching a hole one inch in diameter in the same in presence of the two witnesses, and shall have them deliver said skin to the owner and shall make out and deliver to said owner a certificate showing the number and species of skin so punched, which certificate shall be duly signed by him in his official capacity, and shall be attested by the two freeholder witnesses; and said officer shall receive for his services from the party receiving the certificate the sum of fifty cents for each bear, mountain lion or panther skin so punched, and ten cents for each wolf or cayote skin so punched.

And provided further, That a bounty of ten cents shall be paid for each prairie dog, and five cents for each ground squirrel killed, caused to be killed or slain, and proof made thereof, as in this act provided; but no bounty shall be paid on any prairie dog or ground squirrel when a less number than ten skins are presented at one time; and such skins last mentioned shall be by such probate judge or justice of the peace then and there destroyed. The probate judge or justice of the peace shall receive from the party receiving the certificate the sum of one cent for each skin so destroyed; and the board of county commissioners of each county of this territory is hereby authorized and empowered to appropriate from the general fund of the county not to exceed seven hundred and fifty dollars each year, to be expended by some competent person, at the time and place selected by said board, and under its direction in killing and exterminating prairie dogs and ground squirrels and in procuring such materials and machinery as said board may deem necessary, the said sum or so much thereof as may be necessary, to be appropriated only upon the petition of not less than twenty-five householders of the county, residing in the vicinity of the place where the petition asks that said work shall be performed.

NOTE —Section 1159 is from "An Act to amend an act relative to bounty for killing certain animals, approved March 8, 1883," approved March 5, 1887, and comprises all of said act except the introductory clause thereof as follows "Section 1 That section 657 of an act relative to bounty for killing certain animals, approved March 8, 1883, be and the same is hereby amended so as to read as follows "

13th ses. p 110

Record to be kept

.SEC. 1160. It shall be the duty of the probate judge or justice of the peace, as the case may be; to keep a record, in a bound book kept for the purpose, of all skins so punched, showing dates, number, and kind of skins so punched, name of the owner, and of the witnesses; and said book shall be transmitted by him to his successor on the expiration of his term of office.

Warrant, receipt and report

SEC. 1161. It shall be the duty of the territorial auditor to take all certificates presented that have been issued under the provisions of this act, and he shall give the persons presenting the certificates a warrant on the territorial treasurer for the amount, as specified in section 1159 of this chapter. The person presenting the certificate shall receipt upon the back of it the full amount received, and the auditor and treasurer shall keep an account of all warrants so issued and paid, which shall appear in their annual reports to the governor.

Penalty for forgery of certificates

SEC. 1162. Any person who shall falsely make, alter, forge, or counterfeit any of the certificates mentioned in this act, shall be deemed guilty of forgery, and, upon conviction thereof, shall be punished by imprisonment in the territorial prison for a term of not less than one year, nor more than fourteen years.

SEC. 1163. Any person or persons who shall patch up any skin or scalp, with intention to defraud the territory, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars, and imprisonment in the county jail for not less than three nor more than twelve months, or by both such fine and imprisonment.

Penalty for fraud.

NOTE—Chapter LXVIII act of March 8th, 1883.

CHAPTER LXIX.

HABEAS CORPUS.

Sec. 1164. Every person restrained of his liberty may prosecute writ of habeas corpus.
Sec. 1165. Application to be made by petition, verified.
Sec. 1166. Writ may be granted at any time by judge of district or supreme court.
Sec. 1167. Judge shall grant writ without delay.
Sec. 1168. To whom directed and what to state.
Sec. 1169. Writ to be delivered by clerk without delay.
Sec. 1170. When to be delivered to sheriff.
Sec. 1171. How writ served when person not found.
Sec. 1172. Person disobeying writ to be attached.
Sec. 1173. What party must state in return to writ under oath.
Sec. 1174. When party must bring body of person in his custody.
Sec. 1175. When person sick, need not be brought.
Sec. 1176. Judge may hear and decide on return —when.
Sec. 1177. Judge to proceed immediately when writ returned.
Sec. 1178. What party may deny and allege on hearing.
Sec. 1179. Judge to hear and decide cases in a summary manner.
Sec. 1180. Judge empowered to compel witnesses' attendance.
Sec. 1181. If no legal cause for restraint appear, party to be discharged.
Sec. 1182. If party legally detained, to be remanded.
Sec. 1183. If party in custody on legal process, in what cases to be discharged.

Sec. 1184. When not to be discharged for defect of form in commitment.
Sec. 1185. If charge be defectively set forth in commitment, judge may summon witnesses and investigate the charge.
Sec. 1186. Person entitled to writ to give bail.
Sec. 1187. If person entitled to bail judge to take same.
Sec. 1188. If person not entitled to discharge or bail to be remanded.
Sec. 1189. Judge may order party committed to custody of person entitled thereto
Sec. 1190. Judge to commit person to proper custody until case determined.
Sec. 1191. Writ not to be disobeyed for defect of form.
Sec. 1192. When person discharged, may be again imprisoned for same cause.
Sec. 1193. In what cases judge may issue warrant to have party brought forthwith.
Sec. 1194. May order person detaining prisoner arrested.
Sec. 1195. How officer to execute warrant.
Sec. 1196. Return to warrant same as to writ, may be made and trial had.
Sec. 1197. Such person may be discharged or returned to custody.
Sec. 1198. All processes and writs to be issued by clerk.
Sec. 1199. Penalty for refusing to grant or obey writ.
Sec. 1200. Penalty for removing or concealing prisoner.
Sec. 1201. Any person assisting guilty of misdemeanor.
Sec. 1202. Persons convicted under preceding sec- to be imprisoned.

Who may prosecute a writ.

SEC. 1164. That every person unlawfully committed, detained, confined, or restrained of his liberty, under any pretence whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment.

Application

SEC. 1165. Application for such writ shall be made by petition, signed either by the party for whose relief it is intended, or by some person in his or her behalf, and shall specify:

First. That the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty, the officer or person by whom he or she is confined or restrained, and the place where, naming all the parties, if they are known, or describing them if they are known.

Second. If the imprisonment be alleged to be illegal, the petition must also state in what the alleged illegality consists.

Third. The petition must be verified by oath or affirmation of the party making application.

Who may grant writ.

SEC. 1166. Such writ of habeas corpus may be granted by any judge of the supreme court or district courts at any time, in term or vacation.

Granted without delay.

SEC. 1167. Any judge empowered to grant a writ applied for under this chapter, if it appear that the writ ought to issue, shall grant the same without delay.

Writ, to whom directed and what to command.

SEC. 1168. Such writ shall be directed to the officer or party having such prisoner in custody or under restraint, commanding him or them (as the case may be) to have the body of such person so imprisoned or detained, as is alleged by the petition, before the judge shall direct, specifying in such writ the place where the petition will be heard, to do and receive what shall then and there be considered concerning such person, together with the time and cause of his or her detention, and have then and there such writ.

Delivery of writ

SEC. 1169. If such writ be directed to the sheriff or other ministerial officer, it shall be delivered by the clerk of the court prescribed by the judge issuing said writ to such officer without delay.

Same

SEC. 1170. If such writ be directed to any person other than is specified in the last preceding section, the same shall be delivered to the sheriff or his deputy, and shall be by him served upon such person; by delivering the same to him without delay.

How served.

SEC. 1171. If the officer or person to whom such writ is directed can not be found, or shall refuse admittance to the officer or person serving or delivering such writ, the same may be served or delivered by leaving such writ at the residence of the officer or person to whom it is directed, or by affixing the same on some conspicuous place on the outside of his dwelling house, or the place where the party is confined or under restraint. The service of said writ is made by serving a copy and exhibiting the original, and where the posting is required by posting a copy.

Penalty for refusal to obey writ.

SEC. 1172. If the officer or person to whom such writ is directed shall refuse, after due service, as aforesaid, to obey the same, it shall be the duty of the judge, upon affidavit, to issue an attachment against such person, directed to the sheriff, or if the sheriff be defendant, to an elisor appointed for that purpose by the judge, commanding forthwith to apprehend such person and bring him immediately before such judge, and upon being so brought he shall be committed to the common jail of the county until he make due return of such writ, or be otherwise legally discharged.

Return: statements in, and by whom signed.

SEC. 1173. The party upon whom such writ shall be duly served shall state in his return plainly and unequivocally:

First. Whether he have or have not the party in his custody, or under his power or restraint.

Second. If he have the party in his custody or power, or under his restraint, he shall also state the authority and cause of such imprisonment or restraint, setting forth the same at large.

Third. If the party be detained by virtue of any writ, warrant or any other written authority, a copy thereof shall be annexed to the return, and the original shall be produced and exhibited to the judge on the hearing of such return.

Fourth. If the officer or person on whom such writ shall have been served shall have had the party in custody or under his restraint, at any time prior or subsequent to the date of the writ of habeas corpus but such officer or person has transferred such custody or restraint to another, the return shall state particularly to whom, at what time and place, for what cause and by what authority such transfer took place

Fifth. The return must be signed by the person making the same, and, except when such person shall be a sworn officer, and shall make such return in his official capacity, it shall be verified by his oath or affirmation.

The body to be brought

SEC. 1174. If the writ of habeas corpus be served the person or officer to whom the same is directed shall also bring the body of the party in his custody or restraint, according to the command of the writ, except in the case specified in the next two sections

Exception.

SEC. 1175. Whenever, from sickness or infirmity of the person directed to be produced by any writ of habeas corpus, such person can not, without danger, be brought before the judge, the officer or person in whose custody or power he or she is may state that fact in his return to the writ, verifying the same by affidavit.

Hearing in absence of body

SEC. 1176. If the judge be satisfied of the truth of such allegation of sickness or infirmity, and the return of the writ is otherwise sufficient, such judge may proceed to decide on such return, and to dispose of the matter as if such party had been produced on the writ, or the hearing thereof may be adjourned until such party can be produced.

Hearing.

SEC. 1177. The judge before whom the writ of *habeas corpus* shall be returned shall immediately thereafter proceed to hear and examine the return, and such other matter as may be properly submitted to his hearing and consideration.

Facts stated in return may be denied

SEC. 1178. The party brought before the judge on the return of the writ may deny or controvert any material facts or matters set forth in the return, or except to the sufficiency thereof, or allege any fact to show either that his or her imprisonment or detention is unlawful, or that he or she is entitled to his or her discharge.

Duty of judge

SEC. 1179. Such judge shall thereupon proceed in a summary manner to hear such allegation and proof as may be produced against such imprisonment or detention, or in favor of the same, and to dispose of such party as the law and the justice of the case may require.

Power of judge

SEC. 1180. Such judge shall have power and authority to require and compel the attendance of witnesses by process or subpœna and attachment, and do and perform all other acts and things necessary to a full and fair hearing and determination of the cause.

Discharge.

SEC. 1181. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, such judge shall discharge such party from the custody or restraint under which he or she is held.

Party may be remanded

SEC. 1182. It shall be the duty of such judge, if the time during which such party may be legally detained in custody has not expired, to remand such party if it shall appear that he is detained in custody by virtue of the final judgment or decree of any competent court of criminal jurisdiction, or upon any process issued upon such judgment or decree, or in cases of contempt of court.

Discharge in certain cases.

SEC. 1183. It it appear upon the return of the writ of *habeas corpus*, that the prisoner is in custody by virtue of the process from any court in the territory, or judge or officer thereof, such prisoner may be discharged in the of the following cases, subject to the restrictions of the last preceding section:

First. When the jurisdiction of such court or officer has been exceeded.

Second. When the imprisonment was at first lawful, yet by some act, omission or event, which has taken place afterwards, the party has become entitled to be discharged.

Third. When the process is defective in some matter of substance required by law, rendering such process void.

Fourth. When the process, though proper in form, has been in a case not allowed by law.

Fifth. When the person having the custody of the prisoner is not the person allowed by law to detain him.

Sixth. Where the imprisonment is not authorized by any judgment, order, or decree of any court, nor by any provision of law.

Seventh. Where a party is committed on a criminal charge, without reasonable or probable cause.

Not discharged for defect of form in warrant, etc.

SEC. 1184. If any person be committed to prison, or he be in custody of any officer, on any criminal charge, by virtue of any warrant or commitment of a justice of the peace, such person shall not be discharged from such imprisonment or custody on the grounds of any defect of form in such warrant or commitment.

Judge may recommit

SEC. 1185. If it shall appear to the judge by affidavit, or upon the hearing of the matter, or otherwise upon the implication of the process or warrant of commitment, and such other papers in the proceedings as may be shown to such judge, that the party is guilty of criminal offence, or ought to be discharged, such judge, although the charge be defectively or substantially set forth in such process or warrant of commitment, shall cause the complainant or other necessary witnesses to be subpœnaed to attend at such time as shall be ordered, to testify before such judge; and upon the examination he shall discharge such prisoner or let him or her to bail (if the offence be bailable) or recommit him or her to custody, as may be just and legal.

Writ granted for purpose of giving bail.

SEC. 1186. Whenever any person may be imprisoned or detained in custody on any criminal charge for want of bail, such person shall be entitled to a writ of *habeas corpus*, for the purpose of giving bail upon avering that fact in his petition, without alleging that he or she is illegally confined.

SEC. 1187. Any judge before whom any person who has been committed on a criminal charge shall be brought on a writ of *habeas corpus*, if the same be bailable, may take a recognizance from such person, as in other cases, and shall file the same in the proper court without delay.

Recognizance.

SEC. 1188. If any person brought before the judge on return of the writ be not entitled to his or her discharge, and be not bailed, where such bail is allowable, such judge shall remand him or her to custody, or place him or her under restraint from which he or she was taken, if the person, under whose custody or restraint he or she was, be legally entitled thereto.

Prisoner remanded.

SEC. 1189. In cases where any party is held under legal restraint or custody, or any other person is entitled to the restraint or custody of such party, such judge may order such party to be committed to the restraint or custody of such person as is by law entitled thereto.

May be committed to custody of person entitled

SEC. 1190. Until judgment be given on the return, the judge before whom any party may be brought on such writ, may commit him or her to the custody of the sheriff of the county, or place him or her in such care or under such custody as his or her age or circumstances may require.

Committed until judgment

SEC. 1191. No writ of *habeas corpus* shall be disobeyed for defect of form if it sufficiently appear therefrom in whose custody or under whose restraint the party imprisoned or restrained is, the officer or person detaining him or her, and the judge before whom he or she is brought.

Defective writ to be obeyed

SEC. 1192. No person who has been discharged by the order of the judge upon a writ of *habeas corpus* issued pursuant to the provisions of this article shall be again imprisoned, restrained or kept in custody for the same cause except in the following cases:

Once discharged not again imprisoned, exception

First. If he or she shall have been discharged from custody on a criminal charge, and be afterwards committed for the same offence by legal order or process.

Second. If after a discharge for defect of proof, or for any defect of the process, warrant or commitment in a criminal case, the prisoner may be again arrested, on sufficient proof, and committed by legal process for the same offence.

SEC. 1193. Whenever it shall appear by satisfactory proof, by affidavit, to any judge authorized by law to grant a writ of *habeas corpus*, that any one is

Sheriff may be directed to take applicant in custody illegally held in custody, confinement or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of the judge before whom the application is made, or will suffer some irreparable injury before a compliance with the writ of *habeas corpus* can be enforced, said judge may cause a warrant to be issued, reciting the facts, and directed to the sheriff, or any constable of the county, commanding such officer to take such person thus held in custody, confinement or restraint, and bring him or them forthwith before such judge to be dealt with according to law.

Accused may be arrested.

SEC. 1194. Such judge may also, if the same be deemed necessary, insert in such warrant a command for the apprehension of the person charged with such illegal detention and restraint.

Execution of warrant.

SEC. 1195. The officer to whom such warrant is delivered shall execute the same by bringing the person or persons therein named before the judge who may have directed the issuing of such warrant.

Return to warrant

SEC. 1196. The person alleged to have such party under illegal confinement or restraint may make return to such warrant as in case of a writ of *habeas corpus*, and the same may be denied, and like allegations, proofs, and trial be had thereon as upon the return to a writ of *habeas corpus*.

Discharged or remanded.

SEC. 1197. If such party be held under illegal restraint or custody, he or she shall be discharged, and if not, he or she shall be restored to the custody of the person entitled thereto, or left at liberty, as the case may require.

Writs, etc., issued by clerk

SEC. 1198. All writs, warrants, processes, and subpœnas, authorized by the provisions of this chapter, shall be issued by the clerk of the court, and (except subpœnas) sealed with the seal of the court, and shall be served and returned forthwith, unless the judge shall specify a particular time for any such return.

Penalty for refusal to grant or obey writ

SEC. 1199. If any judge, after a proper application is made, shall refuse to grant an order for a writ of *habeas corpus*, or if the officer or person to whom such writ is directed shall refuse obedience to the command thereof, he or they shall forfeit and pay to the person aggrieved, a sum not exceeding five thousand dollars, to be recovered by an action of debt in any court having cognizance thereof.

Penalty for eluding writ.

SEC. 1200. Any person having in his custody, or under his restraint or power, any person for whose relief a writ of *habeas corpus* shall have been duly issued, pursuant to the provisions of this chapter, who, with the intent to elude the service of such writ, or to avoid the effect thereof, shall transfer such person to the custody of another, or shall place him or her under the power or control of another, or shall conceal or exchange the place of his or her confinement or restraint, or shall remove him or her without the jurisdiction of such judge, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not exceeding five thousand dollars, nor less than one thousand dollars.

Penalty for aiding in violation.

SEC. 1201. Every person who shall knowingly aid or assist in the commission of any offence specified in the last preceding section, shall be deemed guilty of a misdemeanor, and punished as in the last preceding section.

Additional punishment.

SEC. 1202. Every person convicted of any offence under the provisions of the last preceding section, in addition to the punishment therein mentioned, may also be imprisoned in the county jail for a term not exceeding one year.

NOTE—Act of January 12th, 1872

CHAPTER LXX.

IMPRISONMENT FOR DEBT:

Sec. 1203. No imprisonment for debt allowed.

No imprisonment for debt

SEC, 1203. There shall be no imprisonment for debt in this territory; and all laws or part of acts conflicting herewith are hereby repealed.

CHAPTER LXXI.

INFANTS AND LAWFUL AGE.

Sec. 1204. Age of majority.

Age of majority.

SEC. 1204. That all male persons of the age of twenty-one years, and all females of the age of eighteen years, and who are under no legal disability shall be capable of entering into any contract, and shall be, to all intents and purposes, held and considered to be of lawful age.

CHAPTER LXXII.

INSANE.

Sec. 1205. Three commissioners to be elected by the legislature, to have direction over insane.

Sec. 1206. Commissioners to hold office for two years.
Sec. 1207. Commissioners to take oath and give bond.
Sec. 1208. Commissioners to meet and organize.
Sec. 1209. Secretary to preserve proceedings of board; contracts—how executed.
Sec. 1210. Commissioners to prescribe rules for the custody of insane and to advertise for sealed proposals.
Sec. 1211. Commissioners to contract with lowest bidder for care and maintenance of insane.
Sec. 1212. One of commissioners to visit and inspect insane once in three months.
Sec. 1213, Commissioners to certify amount due for maintenance of insane to auditor.
Sec. 1214. Contractor to provide a suitable building for insane.
Sec. 1215. Probate judge or county commissioners to have insane person brought before him, to summon jury; proceedings thereon.
Sec. 1216. Commissioners may annul contract and re-let it.
Sec. 1217. District attorney to sue for and collect amount expended for maintenance, etc., of lunatic.
Sec. 1218. Pay and allowance of commissioners
Sec. 1219. Commissioners to certify amount to auditor.
Sec. 1220. Fees of probate judge or county commissioners for examination.
Sec. 1221. Fees of sheriff for services.
Sec. 1222. Commissioners to report to legislature; governor to fill vacancy.
Sec. 1223. Appropriation to carry this act into effect.
Sec. 1224. Removal of insane from the territory.
Sec. 1225. Indigent insane.
Sec. 1226. All insane patients to be supported at the expense of the territory.
Sec. 1227. Governor to direct discharge of inmate upon report of visiting physician.
Sec. 1228. Money and clothing furnished to discharged inmate.
Sec. 1229. When act takes effect.

Sec. 1230. Inmate may choose one confidential correspondent.
Sec. 1231. Duty of superintendent as to correspondent.
Sec. 1232. Penalty for violation.
Sec. 1233. Printed copy for law to be posted in asylum.
Sec. 1234. Conflicting laws repealed.
Sec. 1235. When takes effect.

Commissioneis of insane

SEC. 1205. There shall be elected during the present session of the legislative assembly of the Territory of Montana, and biennially at each regular session thereof, by the legislative assembly, in joint the convention assembled, one commissioner from each of judicial districts, as the same are or may be established by law in this territory, who shall constitute the board of commissioners for the insane of Montana Territory, and who shall exercise the powers and perform the duties hereinafter mentioned.

Term.

SEC. 1206. Said commissioners shall hold their offices respectively for the term of two years, and until their successors shall be elected and qualified.

Oath and bond

SEC. 1207. It shall be the duty of the secretary of the legislative council, immediately, to notify the persons who may be elected under the provisions of this article, of their election, by transmitting to each of them, by the most speedy and reliable means, a copy of the proceedings of such joint convention relating to said election; and the person so elected shall, within ten days after such election, take and subscribe to the following oath; I, A. B., do solemnly swear that I will truly and faithfully discharge the duties of a member of the board of commissioners for the insane of Montana Territory; that I will carefully guard against any and all improper expenditures of money in all transactions connected with said board; and that I am not now, and will not be during the continuance of my official term, directly or indirectly interested in any bid or contract made by said board. Who shall give a joint bond in good and sufficient security for the faithful performance of their duty, in the sum of twenty thousand dollars, which oath and bond shall be filed with the secretary of the territory.

Organization.

SEC. 1208. It shall be the duty of the board of commissioners aforesaid, as soon as practicable after taking the oath aforesaid, and within forty days after their election, to meet at any place within the judicial districts they may agree upon, and shall organize by electing one of their number as president, and one of them as secretary of said board.

Record of meetings.

SEC. 1209. The secretary shall keep and preserve written minutes of all proceedings of said board, and shall deliver the same to his successor, and each one of said commissioners shall have one vote in determining any question or transacting any business by said board, and all contracts of said board shall be executed in the name of the territory of Montana, by the president and secretary of such board.

Rules; proposals for custody of insane.

SEC. 1210. The said commissioners shall have the power to prescribe all necessary rules for the proper custody, maintenance and treatment of all persons adjudged insane, as hereinafter provided; within this territory; and it shall be their duty to publish the same, inviting sealed proposals, within a period of thirty days thereafter, for the custody, maintenance, and treatment of such insane persons in accordance with such rules; which publication shall be made in some newspaper published in each one of said districts in which a newspaper shall be published, and the first number of which newspaper containing such publication shall be published at least thirty days before any contract shall be made by said commissioners by virtue of this article. All proposals tendered in pursuance of said publication shall be accompanied by a bond in the sum of twenty-five thousand dollars, with sufficient sureties, to be approved by the president of said board, conditioned for the faithful performance of the terms of the contract in case such proposal shall be accepted.

To contract with lowest and best bidder

SEC. 1211. Said commissioners shall canvass all proposals received in accordance with said publication, and they are hereby authorized and empowered to contract on behalf and in the name of the territory of Montana, with the lowest and best bidder, for the care, custody, and maintenance of such insane persons, in accordance with the requirements published as aforesaid; but said commissioners shall have and reserve the power to reject any and all of such proposals; and such contracts shall require the person or persons entering into the same to receive all persons adjudged insane and delivered to him or them, as hereinafter provided; and to keep, maintain, and treat them in accordance with the requirements of said commissioners; and shall specify the compensation agreed upon for each of such insane persons.

To visit and inspect.

SEC. 1212. Said commissioners shall at all times have free access to said insane persons, and it is hereby made their duty to elect one of their board, whose duty it shall be to visit and inspect the condition of all insane persons provided for by this article, at least once in three months.

Payment to contractor.

SEC. 1213. The said commissioners shall, upon the application of the person or persons having the custody of said insane persons, under such contract, at the end of each quarter, certify to the territorial auditor the amount due to such person therefor; and it shall be the duty of such auditor to draw his warrant upon the territorial treasurer for such amount, payable out of the moneys hereinafter appropriated.

Contractor to keep suitable building, etc.

SEC. 1214. The said contract shall require the person or persons entering into the same to provide and keep a secure and suitable building for the safe and proper keeping of such insane persons in the manner prescribed by said commissioners; and such person shall immediately transmit and cause to be filed in the office of the probate judge in each county in the territory a notification of the place at which insane persons from such county shall be delivered for safe keeping and treatment under the provisions hereof.

Examination of person alleged to be insane.

SEC. 1215. From and after the passage of this article it shall be the duty of the probate judge, or in his absence or inability to act, the chairman of the boards of the county commissioners of the several counties of this territory, upon the application of any person under oath, setting forth that any person, by reason of insanity, is unsafe to be at large, or is suffering under mental derangement, to cause the said person to be brought before him at such time and place as he may direct, and the said judge or commissioner shall also cause to appear, at the same time and place, a jury of three citizens of his county, one of whom shall be a licensed practicing physician, who shall proceed to examine the person alleged to be insane, and if such jury, after careful examination, shall certify, upon oath, that the charge is correct, and the said probate judge or commissioner is satisfied that such person, by reason of insanity, is unsafe to be at large, or is incompetent to provide for his or her own proper care and support, and has no property applicable for such purpose, and has no kindred in the degree of husband or wife, father or mother. children, or brother or sister, living within this territory, of sufficient means and ability to provide for such care and maintenance, or if he or she have such kindred within the territory, and such kindred fail or refuse to properly care for and maintain such insane person, such judge or county commissioner shall make out duplicate warrants, reciting such facts, and place them in the hands of the sheriff of said county, who shall immediately, in compliance therewith, convey the person or persons therein named, and deliver him, her or them, to the contractor aforesaid, at the place designated in the notification herein required, and such contractor shall acknowledge, by endorsement in writing, upon the back of each of said warrants, the delivery of such persons described therein to him, and the date thereof; and such sheriff shall return one of said warrants to the officer issuing the same, and forward the other to the secretary of the board of commissioners aforesaid, who shall file and preserve the same.

See chapter LXI, section 1095

Contract may be annulled and new contract made.

SEC. 1216. In case such contractor shall fail to perform his agreement, said commissioners may declare said contract annulled, and proceed to re-advertise and re-let the same, in the meantime provide for the custody and care of such insane persons as may be under the care of such contractor, and such contractor and his sureties shall be liable for all damages sustained by reason of such failure.

Duty of district attorney.

SEC. 1217. The district attorneys of the several districts of this territory shall, at the request of the said board of commissioners, sue for, recover and collect from the property of any insane person maintained under the provisions hereof, sent from any county in such district, or from any person legally bound to support such insane person or persons, the amount expended in the arrest, examination and transportation of such insane person, and in his or her custody, maintenance, and treatment.

Compensation of commissioners.

SEC. 1218. Said commissioners shall each be allowed the sum of six dollars for each day they may be actually and necessarily engaged in the discharge of their duties as herein prescribed, and twenty cents for each mile actually and necessarily travelled by them in performance of such duties.

Payment.

SEC. 1219. Said commissioners shall certify to the territorial auditor such amounts as may be payable for expenses incurred by virtue hereof, and the auditor shall draw his warrant upon the territoral treasurer therefor.

Fees of probate judge

SEC. 1220. There shall be allowed to the probate judge or commissoner the following fees: For the examination, to include all necessary entries, three dollars; for each warrant issued, one dollar.

— See chapter LXI, section 1095.

Fees of sheriff

SEC. 1221. And there shall be allowed to the sheriff the following fees: For arresting and bringing the person charged with insanity before the probate judge, or, in the absence of the judge, the chairman of the county commissioners, and subpœnaing witnesses, the same fees as are allowed by law in other cases; for taking an insane person to the place designated by the probate judge or chairman aforesaid, five dollars per day for the time necessarily employed, and twenty cents for each mile necessarily traveled, and all necessary disbursements for the support of the insane person, to be audited by the county commissioners, and paid out of the county treasury of the county in which said person shall be adjudged insane.

See chapter LII, section 935

Board to make report

SEC. 1222. It shall be the duty of said board of commissioners to make full report of all their proceedings under this article to the legislative assembly at such regular session thereafter; and in case a vacancy occurring in said board during a recess of the assembly, the governor shall designate some suitable person to fill such vacancy until the next meeting of the legislative assembly.

Appropriation

SEC. 1223. The sum of fifteen thousand dollars is hereby appropriated out of any money in the treasury not otherwise appropriated, for the purpose of carrying out the provisions of this article during the years commencing January 1st, 1870, and January 1st, 1871.

NOTE—Act January 12th, 1872

Inmate transferred to another state at expense of territory

SEC. 1224. That hereafter whenever the friends or relatives of any inmate of the Montana insane asylum shall apply for assistance or permission to remove any patient in said asylum from thence to his or her friends or relatives in any state or territory, the governor of this territory is hereby authorized and empowered to have such insane person conveyed to his or her relatives or friends, at the expense of the territory of Mnntana, if he shall deem such action conducive to the interests of this territory, and the welfare of the insane person; and that the territorial auditor be, and he is hereby authorized and instructed to draw warrants on the territorial treasurer in favor of the governor of this territory for such amounts, at such times as may be required for the purpose mentioned in this section.

1225. That the governor be and is hereby authorized by publication for three weeks in a newspaper published at the capital of the territory, inviting pro-

Governor may contract for keeping insane, until completion of asylum

posals for the care and maintenance of the indigent insane of Montana territory, and to let the contract to the lowest responsible bidder; but the governor shall have the right to reject any and all bids, and to make a private contract, provided such contract can be made at less price than any bids made under publication for proposals, and that such indigent insane shall be maintained under such contract so long as in the judgment of the governor the interests of the territory will be subserved thereby; and that upon the receipt of any account for such maintenance the governor shall certify to the same, if it be correct, and thereupon it shall be the duty of the territorial auditor to draw his warrant upon the territorial treasurer for an amount of money sufficient to pay therefor; *Provided*, That the governor shall not contract, under this resolution, for a period extending beyond the completion of the asylum for the insane; and, *provided further*, that whenever, in the judgment of the governor, it is desirable to send such insane person to friends out of the territory, he may do so at the expense of the territory; and whenever in his judgment, the interests of such insane persons, and of the territory will be promoted by changing the said contract to some other institution or person, at a rate not exceeding that mentioned in said communication, he may do so, and the expenses shall be paid by warrants drawn on the territorial treasurer, to be sold by the auditor, to raise the money herein authorized to be expended; *Provided further*, That the costs necessarily attending the adjudication of insanity, and transportation of any insane persons to the place provided for their care and maintenance, shall be paid by the county where such insane person resides at the time he may be adjudged to be insane, *Provided further*, That idiotic persons shall be classed with insane persons under the provisions of this chapter, and the word "maintenance," in this chapter, shall be construed to mean and include medical attendance.

NOTE—Act February 16th, 1877.

13th ses. p. 112

Insane to be cared for at expense of territory.

SEC. 1226. All persons hereafter adjudged insane under the laws of this territory, whether indigent or not, shall be cared for by the territory, under the contract made by the governor of the territory, as now provided for the care and maintenance of indigent insane; and no person so adjudged insane shall be refused admission into any asylum provided by the territory, nor shall the territory ask or receive any compensation therefor.

NOTE.—Section 1226 act of March 7th, 1883

Inmate may be discharged upon report of physician

SEC. 1227. That the governor shall direct and have discharged from the insane asylum any of the inmates thereof, at any time when, from written report to him by the physician in charge of said asylum, or either of them, or from any physician he shall appoint to visit and examine said institution, he believes such discharge should be granted: *Provided*, That the report upon which he may act shall be filed and kept in his office.

Money and clothing furnished to indigent person upon discharge

SEC. 1228. Be it further enacted that when any person shall be about to be discharged from said asylum, and is in such indigent circumstances as to not be able to furnish himself, and has not friends who will so furnish means of comfort and expenses to go out upon, there shall be furnished to such person twenty dollars in money and a common suit of comfortable clothes, including hat, shoes and socks, for all which the auditor shall draw his warrant under the approval of the governor upon the treasurer, and he shall pay the same.

Takes effect

SEC. 1229. This act shall take effect from its passage.

NOTE—Sections 1227, 1228 and 1229 are respectively sections 1, 2 and 3 and comprise all of "An Act to amend an act concerning the inmates of public institutions, approved March 7, 1883," approved March 10, 1887.

WHEREAS, The imprisoned inmates of insane asylums are outside the pale of justice and beyond the reach of the laws, by having no means of access to the laws while deprived of their postoffice rights; and

WHEREAS, Those incapable of self-defense are justly entitled to the protection of the same laws as shield all other citizens; therefore justice demands that this link which now severs them from access to the laws should be legally established. Therefore

Be it enacted by the legislative assembly of Montana:

Inmate of asylum may choose confidential correspondent.

SEC. 1230. That henceforth each and every inmate of each and every insane asylum, both public and private, in the Territory of Montana, shall be allowed to choose one individual from the outside world, to whom he or she may write, when and whatever he or she desires; and over these letters to this individual there shall be no censorship exercised or allowed by any of the asylum officials or employes; but their postoffice rights, so far as this one individual is concerned, shall be as free and unrestricted as are those of any other resident or citizen of the Territory of Montana, and shall be under the protection of the same postal laws; and each and every inmate shall have the right to make a new choice of this individual party every three months if he or she so desires to do; and it is here made the duty of the superintendent to furnish each and every inmate of every insane asylum in this territory, either public or private, with suitable material for writing, inclosing, sealing, stamping and mailing letters, sufficient at least for the writing [of] one letter a week: *Provided*, They request the same, unless they are otherwise furnished with such materials, and all such letters shall be dropped by the writers thereof, accompanied by an attendant when necessary, into a postoffice box provided by the territory at the insane asylum, and kept in some place easy of access to all the patients; the attendant is required in all cases to see that this letter is directed to the patient's correspondent, and if it is not so directed it must be held subject to the superintendent's disposal, and the contents of these boxes shall be collected once every week by an authorized person from the postoffice department and by him placed in the hands of the United States mail for delivery.

List of correspondents to be registered and posted.

SEC. 1231. That it is hereby made the duty of the superintendent to keep registered and posted in some public place at the insane asylum a true copy of the names of every individual chosen as the inmates' correspondent, and by whom chosen; and it is hereby made the duty of the superintendent to inform each of the individuals of the name of the party choosing him or her, and he is to request him or her to write his or her own name on the outside of the envelope of every letter he or she writes to this individual inmate; and all these letters bearing the individual writer's name on the outside, he is requested to deliver or cause to be delivered any letter or writing to him or her directed without opening or reading the same, or allowing it to be opened or read unless there is reason for believing the letter contains some foreign substance, which might be used for medication, in which case the letter shall be required to be opened in the presence of a competent witness, and this substance shall be delivered to the superintendent to be used at his discretion.

Penalty for violation.

SEC. 1232. That any person refusing or neglecting to comply with, or willingly or knowingly violating any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished as the criminal code of the territory of Montana prescribes, and by ineligibility to any office in the asylum afterward.

Printed copy to be posted

SEC. 1233. That a printed copy of this act shall be framed and kept posted in every ward of every insane asylum, both public and private, in the territory of Montana.

Repeal.

SEC. 1234. That all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Takes effect, when.

SEC. 1235. This act shall be in force thirty days from its passage.

NOTE—Sections 1230 to 1235, both inclusive, are respectively sections 1 to 6, both inclusive, and, together with the preceding preamble, comprise all of "An act to place the inmates of insane asylums under the protection of the laws by securing to them their postal rights," approved March 3d, 1887

CHAPTER LXXIII.

INTEREST.

Sec. 1236. Legal rate of interest.
Sec. 1237. Creditors allowed to collect ten per cent interest in certain cases.
Sec. 1238. Parties may agree to a higher rate of interest; agreement to be enforced by courts.

Rate of interest without agreement

SEC. 1236. The legal rate of interest on the forbearance or loan of any money, when there is no agreement between the parties, as specified in section 1238 of this chapter, shall be ten per centum per annum.

Same

SEC. 1237. Creditors shall be allowed to collect and receive interest when there is no agreement as to the rate thereof, at the rate of ten per cent. per annum for all moneys after they become due, on any bond, bill, promissory note, or other instrument of writing, and on any judgment rendered before any court or magistrate authorized to enter up the same, within the territory, from the day of entering up such judgment until satisfaction of the same be made; likewise on money lent, or money due on the settlement of accounts, from the day of such settlement of accounts, between the parties, and ascertaining the balance due; on money received to the use of another, and retained without the owner's knowledge, and on money withheld by an unreasonable and vexatious delay.

Parties may stipulate for any rate of interest

SEC. 1238. The parties to any bond, bill, promissory note or other instrument of writing, may stipulate therein the payment of a greater or higher rate of interest than ten per centum per annum, and any such stipulation contained in any such instrument of writing may be enforced in any court of law or equity of competent jurisdiction in this territory. And when any instrument provides for a certain rate of interest, from date until paid, or after due until paid, or in words to like effect, it shall be construed to mean interest at the stipulated rate until the same is paid.

NOTE.—Act of Jannary 12, 1872.

CHAPTER LXXIV.

IRRIGATION AND WATER RIGHTS.

Sec. 1239. Any person or company holding land entitled to water for irrigation.
Sec. 1240. Persons to have right of way for ditch or canal.
Sec. 1241. Right to extend only so far as is necessary.
Sec. 1242. Date of appropriation to determine rights.
Sec. 1243. Water to be made available without injury to prior appropriator.
Sec. 1244. Person digging ditch to be liable for damage.
Sec. 1245. This act not to interfere with rights acquired; its passage.
Sec. 1246. This act not to prevent use of water for mining, etc.
Sec. 1247. Persons constructing ditches across roads to repair same.
Sec. 1248. Penalty for violating preceding section.
Sec. 1249. Rights of persons to be governed by local laws, rules and customs, decisions of supreme court, etc.
Sec. 1250. Rights acquired by appropriation.
Sec. 1251. Must be for some useful purpose.
Sec. 1252. Changes may be made in location of ditch.
Sec. 1253. Water, how diverted and reclaimed.
Sec. 1254. First in time, first in right.
Sec. 1255. Proceeding necessary to acquire water right.
Sec. 1256. Duties of appropriator of water.
Sec. 1257. When right to water forfeited.
Sec. 1258. Water rights, how preserved and retained.
Sec. 1259. Records of water rights to be received by courts.
Sec. 1260. Proceedings in suits at law.

Sec. 1261. Duties of county recorder.
Sec. 1262. Measurement of water.
Sec. 1263. Owners of water must sell surplus if demanded.
Sec. 1264. Duty of purchaser to dig ditches, etc.
Sec. 1265. Right to surplus and enforcement thereof.
Sec. 1266. Purchaser acquires no right to sell.

Owner of land entitled to use of water of streams for irrigation

SEC. 1239. Any person or persons, corporation or company, who may have or hold a title, or possessory right or title, to any agricultural lands within the limits of this territory, as defined by the organic act thereof, shall be entitled to the use and enjoyment of the waters of the streams or creeks in said territory for the purposes of irrigation and making said land available for agricultural purposes to the full extent of the soil thereof: *Provided*, That in all cases where, by virtue of prior appropriation, any person may have diverted all the water of any stream, or to such an extent that there shall not be an amount sufficient left therein for those having a subsequent right to the waters of such stream for such purpose of irrigation, and there shall at any time be a surplus of such water so diverted, over and above what is actually used for such purpose by such prior appropriator, such person shall be required to turn and cause to flow back into such stream, such surplus water, and upon failure so to do, within five days after demand being made upon him in writing by any person having a right to the use of such surplus water, such person, so diverting the same, shall be liable to the person aggrieved thereby in the sum of twenty-five dollars for each and every day such water shall be withheld after such notice; to be recovered by civil action by any person having a right to the use of such surplus water.

Surplus water to be turned back into stream

NOTE —Act February 21st, 1879

Right of way for ditches, etc

SEC. 1240. When any person or persons, corporation or company, owning or holding land as provided in section 1239 of this chapter, shall have no available water facilities upon the same, or whenever it may be necessary to raise the waters of said stream or creek to a sufficient height to so irrigate said land, or whenever such lands are too far removed from said stream or creek to so use the waters thereof as aforesaid, such person or persons, corporation or company, shall have the right of way through and over any tract or piece of land for the purposes of conducting and conveying said water by means of ditches, dykes, flumes, or canals, for the purpose aforesaid.

Extent of right of way

SEC. 1241. Such right to so dig and construct ditches, dykes, flumes and canals, over and across the lands of another, shall only extend to so much digging, cutting or excavations as may be necessary for the purposes required.

Prior appropriation

SEC. 1242. In all controversies respecting the rights to water, under the provisions of this chapter, the same shall be determined by the date of the appropriation, as respectively made by the parties.

Prior rights to be respected

SEC. 1243. The waters of the streams or creeks of the territory may be made available to the full extent of the capacity thereof for irrigating purposes, without regard to deterioration in quality or diminution in quantity, so that the same do not materially affect or impair the rights of the prior appropriator; but in no case shall the same be diverted or turned from the ditches or canals of such appropriator, so as to render the same unavailable.

Damages for right of way.

SEC. 1244. Any person or persons, corporation or company, damaging or injuring the lands or possessions of another, by reason of cutting or digging ditches or canals, or erecting flumes, as provided by section 1240 of this chapter, the party so committing such injury or damage shall be liable to the party so injured therefor.

Rights not affected

SEC. 1245. This chapter shall not be so construed as to impair, or in any way or manner interfere with, the rights of parties to the use of the water of such streams or creeks acquired before its passage.

Right to use water for other purposes recognized.

SEC. 1246. This article shall not be so construed as to prevent or exclude the appropriators of the waters of the said streams or creeks for mining, manufacturing, or other beneficial purposes, and the right also to appropriate the same is hereby equally recognized and declared.

Highways to be protected.

SEC. 1247. Any person or persons, corporation or company, who may dig and construct ditches, dykes, flumes or canals, over or across any public roads or highways, or who use the waters of such ditches, dykes, flumes, or canals, shall be required to keep the same in good repair at such crossings or other places where the water from any such ditches, dykes, flumes or canals, may flow over, or in anywise injure any roads or highways, either by bridging or otherwise.

Penalty for violating preceding section.

SEC. 1248. Any person or persons offending against section 1247 of this chapter, on conviction thereof, shall forfeit and pay for every such offence a penalty of not less than twenty-five dollars, nor more than one hundred dollars, to be recovered, with costs of suit, in civil action, in the name of the Territory of Montana, before any court having jurisdiction; one-half of the fine so collected shall be paid into the county treasury for the benefit of the common schools of the county in which the offence was committed, and the other half shall be paid to the person or persons informing the nearest magistrate that such offence has been committed. All such fines and costs shall be collected without stay of execution, and such defendant or defendants may, by order of the court, be confined in the county jail until such fine and costs shall have been paid.

Date of appriation to determine controversy.

SEC. 1249. In all controversies respecting the right to water in this territory, whether for mining, manufacturing, agricultural, or other useful purposes, the rights of the parties shall be determined by the dates of appropriation respectively, with the modifications heretofore existing under the local laws, rules, or customs and decisions of the supreme court of the territory.

NOTE—Act of January 12th, 1872

14th ses p. 130
Appropriation

SEC. 1250. The right to the use of running water flowing in the rivers, streams, canyons, and ravines of this territory, may be acquired by appropriation.

Must be for useful or beneficial purpose

SEC. 1251. The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest abandons and ceases to use the water for such purpose the right ceases; but questions of abandonment shall be questions of fact, and shall be determined as other questions of fact.

Place of diversion may be changed.

SEC. 1252. The person entitled to the use of water may change the place of division, if others are not thereby injured, and may extend the ditch, flume, pipe, or aqueduct, by which the diversion is made, to any place other than where the first use was made, and may use the water for other purposes than that for which it was originally appropriated.

Water may be turned into another stream

SEC. 1253. The water appropriated may be turned into the channel of another stream and mingled with its waters, and then be reclaimed; but, in reclaiming it, water already appropriated by another must not be diminished in quantity, or deteriorated in quality.

First in time first in right.

SEC. 1254. As between appropriators the one first in time is first in right.

To post notice of appropriation

SEC. 1255. Any person hereafter desiring to appropriate water must post a notice in writing in a conspicuous place at the point of intended diversion, stating therein:

First. The number of inches claimed, measured as hereinafter provided.

Second. The purpose for which it is claimed and place of intended use.

Third. The means of diversion, with size of flume, ditch, pipe, or aqueduct, in which he intends to divert it.

Fourth. The date of appropriation.

Fifth. The name of the appropriator.

14th ses. p. 131

To file notice with recorder.

Within twenty days after the date of appropriation the appropriator shall file with the county recorder of the county in which such appropriation is made a notice of appropriation, which, in addition to the facts required to be stated in the posted notice, as hereinbefore prescribed, shall contain the name of the stream from which the diversion is made, if such stream have a name, and if it have not, such a description of the stream as will identify it, and an accurate description of the point of diversion on such stream with reference to some natural object or permanent monument. The recorded notice shall be verified by the affidavit of the appropriator, or some one in his behalf, which affidavit must state that the matters and things contained in the notice are true.

Work, when to be commenced and how prosecuted.

SEC. 1256. Within forty days after posting such notice the appropriator must proceed to prosectute the excavation or construction of the work by which the water appropriated is to be diverted, and must prosecute the same with reasonable diligence to completion.

Water in excess of capacity of ditch may be appropriated by another.

If the ditch or flume, when constructed, is inadequate to convey the amount of water claimed in the notice aforesaid, the excess claimed above the capacity of the ditch or flume shall be subject to appropriation by any other person, in accordance with the provisions of this chapter.

Result of failure to comply with this law.

SEC. 1257. A failure to comply with the provisions of this chapter deprives the appropriator of the right to the use of water as against a subsequent claimant who complies therewith, but by complying with the provisions of this act, the right to the use of the water shall relate back to the date of posting the notice.

Former rights may be established.

SEC. 1258. Persons who have heretofore acquired rights to the use of water shall, within six months after the publication of this act, file in the office of the recorder of the county in which the water right is situated a declaration in writing, except notice be already given of record as required by this act, the same facts as required in the notice provided for record in section 1255 of this chapter, such declaration shall be verified as required in section 1255 of this chapter, in cases of notice of appropriation of water: *Provided*, That a failure to comply with the requirements of this section may in no wise work a forfeiture of such heretofore acquired rights, nor prevent any such claimant from establishing such rights in the courts.

Record, prima facie evidence

SEC. 1259. The record provided for in sections 1255 and 1258 of this chapter, when duly made, shall be taken and received in all the courts of this territory as *prima facie* evidence of the statements therein contained.

Parties to suit

SEC. 1260. In any suit hereafter commenced for the protection of rights acquired to water under the laws of this territory, the plaintiff may make any or all persons who have diverted water from the same stream or source parties to such action, and the court may in one decree settle the relative priorities and rights of all the parties to such suit. When damages are claimed for the wrongful diversion of water in any such suit, the same may be assessed and apportioned by the jury in their verdicts, and judgment thereon may be entered for or against one or more of several plaintiffs, or for or against one or more of several defendants, and may determine the ultimate rights of the parties between themselves.

In any action concerning joint water rights, or joint rights in water ditches, unless partition of the same is asked by parties to the action, the court shall hear and determine such controversy as if the same were several as well as joint.

Record book

SEC. 1261. The recorder of such county must keep a well-bound book, in which he must record the notices and declarations provided for in this act, and he shall be entitled to have and receive the same fees as are now or hereafter may be allowed by law for recording instruments entitled to be recorded.

Measurement of water

SEC. 1262. The measurement of water appropriated under this chapter shall be conducted in the following manner: A box or flume shall be constructed with a head-gate placed so as to leave an opening of six inches between the bottom of the box or flume and lower edge of the head-gate, with a slide to enter at one side of and of sufficient width to close the opening left by the head-gate, by means of which the dimensions of the opening are to be adjusted. The box or flume shall be placed level, and so arranged that the stream in passing through the aperture is not obstructed by backwater, or an eddy, below the gate: but before entering the opening to be measured the stream shall be brought to an eddy, and shall stand three inches on the head-gate and above the top of the opening. The number of square inches contained in the opening shall be the measure of inches of water.

NOTE—Sections 1250 to 1262 inclusive, act of March 12, 1885

Sale of water

SEC. 1263. That any person or persons, company or corporation, having the right to use, sell or dispose of water, and engaged in using, selling or disposing of the same, who shall have a surplus of water not used, or sold, or any person or persons, corporation or company, having a surplus of water, and the right to sell and dispose of the same, shall, and they or it are hereby required, upon the payment or tender to the person or persons entitled thereto, an amount equal to the usual and customary rates per inch, to convey and deliver to the person or persons, company or corporation, such surplus of unsold water, or so much thereof for which said payment or tender shall have been made, and shall continue so to convey and deliver the same weekly so long as said surplus of unused or unsold water shall exist and said payment or tender made as aforesaid.

Same.

SEC. 1264. Any person or persons, corporation or company, desiring to avail themselves of the provisions of this chapter, shall, at their own cost and expense, construct or dig the necessary flumes or ditches to receive and convey the surplus water so desired by it or them, and shall pay or tender to the person or persons, corporation or company having the right to the use, sale or disposal thereof, an amount equal to the necessary costs and expense of tapping any gulch, stream, reservoir, ditch, flume or aqueduct, and putting in gates, gauges or other proper and necessary appliances usual and customary in such cases, and until the same shall be so done the delivery of the said surplus water shall not be required as provided by section 1263 of this chapter.

Same.

SEC. 1265. That any person or persons, corporation or company, constructing the necessary ditches, aqueducts or flumes and making the payments or tenders hereinbefore provided, shall be entitled to the use of so much of the said surplus water as said ditches, flumes or aqueducts shall have the capacity to carry, and for which payment or tender shall have been made as aforesaid, with all the rights and privileges incidental thereto so long as said unsold or surplus water exists and said payment or tender shall be or have been made, and may institute and maintain any appropriate action at law or in equity for the enforcement of such right or recovery of damages arising from a failure to deliver or wrongful diversion of the same.

Limitation to right of sale.

SEC. 1266. That nothing in this chapter shall be so construed as to give the person or persons, corporation or company, acquiring the right to the use of water as hereinbefore provided, the right to sell or dispose of the same after being so used by it or them, or prevent the original owner or proprietor from retaking, selling and disposing of the same in the usual and customary manner, after it is so used as aforesaid.

NOTE—Act of February 16, 1877

CHAPTER LXXV.

JAILS AND PRISONERS.

Sec. 1267. A jail shall be built in each county.
Sec. 1268. Jails may be built elsewhere than at county seat.
Sec. 1269. County commissioners to have direction of jail and treatment of prisoners.
Sec. 1270. Sheriff to have custody of jail and prisoners, to furnish sustenance, clothing, etc.
Sec. 1271. Sheriff may appoint a jailer.
Sec. 1272. In case of death or resignation of sheriff, jailer to have charge.
Sec. 1273. Penalty for defrauding prisoners.
Sec. 1274. Sheriff to make return to county commissioners of prisoners in jail—when.
Sec. 1275. Persons in custody of United States authorities may be committed to jail on payment of fees, etc.
Sec. 1276. Prisoners confined for inability to pay fines, etc., may be hired out; earnings—how disposed of.
Sec. 1277. Governor, for sufficient reasons, may order prisoners removed to another jail.

Sec. 1278. Expenses to be paid by county from whence removed.
Sec. 1279. Sheriff to convey prisoners to penitentiary.
Sec. 1280. Convicts sentenced to imprisonment may be compelled to labor during their term.
Sec. 1281. Such labor to be done under direction of county commissioners.
Sec. 1282. Corporate authorities of cities authorized to work or employ criminals.
Sec. 1283. Officers empowered to chain prisoners to prevent escape.
Sec. 1284. Unruly prisoners; how punished.
Sec. 1285. Compensation allowed prisoners in city jails.
Sec. 1286. Repeal.

One jail in each county:

SEC. 1267. There shall be built or provided and kept in good repair in each county one common jail, at the expense of the county.

Other jails authorized.

SEC. 1268. That whenever in the discretion of the commissioners of the several counties it is necessary or desirable to build a jail or lock-up in any town other than the county-seat, they are hereby authorized and empowered so to do: *Provided, however*, that no such jail or lock-up shall cost to exceed one thousand dollars.

NOTE—Section 1268 is section 1, and comprises all of "An act authorizing the county commissioners of the several counties to build jails and lock-ups," approved March 10, 1887

Authority of commissioners

SEC. 1269. The county commissioners shall have the care of building, inspecting and repairing such jail, and shall, once every three months, inquire into the state, as respects the security thereof, and the treatment and condition of prisoners, and shall take all necessary precaution against escape, sickness or infection.

Custody of and supplies for jail and its inmates.

SEC. 1270. The sheriff shall have the custody of the jail in his county, and of the prisoners therein, and shall keep the same, personally or by his deputy, for whose debts he shall be responsible, and shall furnish, at the expense of the proper county, all necessary sustenance, bedding, clothing, fuel and medical attendance for the prisoners committed to his custody.

See section 1074, chapter LXI

Jailer.

SEC. 1271. The sheriff may appoint a jailer, who, in the absence or disability of the sheriff, shall have the custody of the jail and the prisoners.

In case sheriff's office becomes vacant.

SEC. 1272. In case of the death, resignation or removal of the sheriff, the person provided for by law to supply his place shall have charge of the county jail of his proper county, and all persons by law confined therein, and such sheriff or other officer is hereby required to conform, in all respects, to the provisions of this chapter.

Penalty for defrauding or ill-treating prisoner

SEC. 1273. If any sheriff or jailer shall defraud any prisoner of his allowance, or shall not provide a reasonable allowance and accommodation, he shall forfeit fifty dollars for each offence, to be recovered by an action for debt by the county commissioners for the use of the county.

To provide commissioners with list of prisoners, etc

SEC. 1274. The sheriff, or other officer performing the duties of sheriff, shall, five days previous to the opening of the district court in the district in which his county is situated, return to the commissioners of his county a certified list of the names of all prisoners then in his custody, with the time and cause of their confinement, and the length of the term for which they were committed, and he shall also return to said commissioners, within five days after the close of said term of court, the name and cause and term of commitment of every prisoner committed during said term of court, and any jailer who shall neglect to make such return, for every such neglect shall pay a fine not to exceed fifty nor less than twenty dollars, to be imposed at the next term of said court, on information of said commissioners of such neglect, and such fine shall go to the county.

U. S prisoners may be kept in county jail

SEC. 1275. Persons may be committed under the authority of the United States to any jail in this territory upon payment of the expenses of supporting such prisoners, ten dollars per month to the county, for the use of the jail, and all legal fees to the jailer, and the sheriff shall receive such prisoners and subject them to the same discipline and treatment, and be liable for any neglect of duty, as in the case of other prisoners, but the county, in no case, shall be liable for the escape of such prisoner or prisoners.

Compensation allowed prisoner for confinement.

SEC. 1276. Whenever any prisoner under conviction for any criminal offence shall be confined in jail for any liability to pay any fine, forfeiture, or costs, or to procure sureties, the district court, upon satisfactory evidence of such inability, may, in lieu thereof, confine such person in the county jail at the rate of five dollars per day until the forfeiture of costs so imposed shall be satisfied; and, in such case, the sheriff may procure

Prisoner may be hired out

chains for the safe keeping of such prisoner or prisoners, and hire out or put to labor such prisoner or prisoners, and shall charge the earnings of the same to himself for the sustenance of said prisoners, and any surplus that may accrue from such labor shall be paid into the county treasury to the credit of said prisoner.

Removal of prisoner to another jail

SEC. 1277. Whenever, from any sufficient cause, the sheriff shall think it expedient that the prisoner be removed from the jail of his county, on application in writing to the governor of the territory by the sheriff and commissioners of such county, the governor may order such prisoner to be removed to some other jail, anywhere within the territory, there to be detained in the same manner as in the jail from whence they were moved, until remanded back by a similar process, or discharged according to law.

Expense of removal

SEC. 1278. All the expenses of removing and maintaining prisoners, incurred under the preceding section shall be defrayed by the county from which they were so removed.

Transfer to penitentiary.

SEC. 1279. Within five days after the adjournment of a term of court in each county, the sheriff shall convey to the territorial penitentiary all prisoners that shall have been sentenced to imprisonment in the penitentiary, and deliver such prisoners to the keeper thereof, in accordance with the sentence of the court.

Prisoner may be required to labor.

SEC. 1280. Whenever any person or persons in this territory shall have been sentenced to imprisonment for any term for the commission of any crime, misdemeanor, or felony, against the laws of this territory, or in violation of any city ordinance of any incorporated city in this territory, by a judgment of any court or judge thereof, justice of the peace, or municipal court, or shall have been committed to jail for any term in default of the payment of any fine or penalty imposed by any such courts or justices, the person or persons so imprisoned may be required and compelled to work and perform labor during his or their respective terms of imprisonment.

Commissioners authorized to enforce provisions of this chapter.

SEC. 1281. The county commissioners of any county of this territory are hereby authorized and empowered to enforce the provisions of this chapter in their respective counties, and to employ any criminal or criminals committed to the jails of their respective counties, as referred to in the preceding section, in the performance of any work or labor, or in any occupation or trade, as to them shall seem proper, such work to be carried on under the superintendence of any sheriff, deputy sheriff, or constable of such county as said commissioners may designate; the benefits, profits and results of such work and labor to be enjoyed and used are to accrue to the county in which such criminal or criminals may be confined.

Privileges of this chapter conferred upon cities and towns

SEC. 1282. The city council or authorities of any incorporated city in this territory are also authorized to work or employ any prisoner or prisoners committed to jail for the violation of any city ordinance of such city, or in default of the payment of any fine or penalty imposed for the violation of any ordinance of such city, such labor to be performed under the supervision of any marshal, constable or police officer of such city as the authorities may designate, the profits and results of such labor to accrue to such city. All incorporated cities and towns of this territory are hereby granted the full and complete privileges of this chapter.

Prisoner may be fastened with chains, etc.

SEC. 1283. The officers herein mentioned are fully authorized and empowered to secure and fasten with chains or other device any prisoner or prisoners in the performance of any such labor, so as to prevent the escape of any such prisoner or prisoners.

Punishment of disobedient prisoner

SEC. 1284. Any person or persons who may be put to labor or assigned labor to perform, under the provisions of this chapter, who shall be refractory and unruly, who shall refuse to perform the task assigned, who shall wilfully injure or destroy any material given to be worked upon, or any tool, implement, or instrument whatever, with which to perform such labor, or who shall perform such task or tasks negligently, may be placed in solitary confinement, and be fed upon bread and water, or subjected to such like punishment by the officers having the same in charge, until the said prisoner or prisoners shall agree to do and perform the labor assigned in a satisfactory manner, and with due diligence and care.

NOTE—Act of January 12, 1872, except where otherwise specially noted

Compensation for prisoner in city jail

SEC. 1285. Hereafter, in any incorporated city, when any person shall be committed to jail in default of the payment of any fine, penalty or costs, for any violation of the ordinances of such city, the compensation per day which shall be allowed him in satisfaction of such fine, penalty and costs, shall be such as is fixed by ordinance of such city.

Repeal.

SEC. 1286. All acts or parts of acts in conflict with this act are hereby repealed.

NOTE—Sections 1285 and 1286 are respectively sections 1 and 2 and comprises all of "An Act concerning prisoners in city jails," approved March 9, 1887.

CHAPTER LXXVI.

JOINT DEBTORS.

Sec. 1287. One partner may be discharged without discharging his co-partner.
Sec. 1288. Note or memorandum exonerating debtor.
Sec. 1289. Co-partners not discharged; extent of payment.
Set. 1290. Right of co-partners against compromising partner.
Sec. 1291. Above provisions extend to all joint debtors.
Sec. 1292. Not to apply to principal debtor when joint debtors are sureties.
Sec. 1293. Judgment and execution in such cases.

One partner may be discharged from debt without discharging partner.

SEC. 1287. That whenever any co-partnership firm shall be dissolved by mutual consent or otherwise, it shall be and may be lawful for any one or more of the individuals who was or were embraced in such co-partnership firm, to make a separate composition or compromise with any one or all of the creditors of such co-partnership firm; and such composition or compromise shall be a full and effectual discharge to the debtor or debtors making the same, and to them only, of and from all and every liability to the creditor or creditors with whom the same is made or incurred, by reason of his or their connection with such co-partnership firm, according to the terms of such compromise.

Memorandum.

SEC. 1288. Every such debtor or debtors making such composition or compromise, may take from the creditor or creditors with whom he may make the same, a note or memorandum in writing exonerating him or them from all and every individual liability incurred by reason of such connection with such co-partnership firm, which note or memorandum may be given in evidence by such debtor or debtors in bar of such creditor's right of recovery against him or them, and if such liability shall be by judgment in any court of record in this territory, then on a production to and filing with the clerk of such court the said note or memorandum in writing, such clerk shall discharge such judgment of record as far as the said compromising debtor or debtors shall be concerned.

Compromise with one partner not to affect liability of another

SEC. 1289. Such compromise or composition with an individual member of a firm shall not be so construed as to discharge the other co-partners, nor shall it impair the right of the creditor to proceed against the members of such co-partnership firm as have not been discharged. And the member or members of such co-partnership firm so proceeded against shall be permitted to set off any demand against said creditor or creditors which could have been set off had such suit been brought against all of the individuals composing such firm; nor shall such compromise or discharge of an individual of a firm prevent the other members of such firm from availing themselves of any defence that would have been available had this chapter not been passed, except that they shall not set up the discharge of the other co-partners unless it shall appear that all were intended to be discharged: *Provided*, That the discharge of any such co-partner shall be deemed a payment to the creditor equal to the proportionate interest of the partner discharged in the partnership concern.

Rights of other partners

SEC. 1290. That such compromise or composition of an individual of a firm with a creditor of such firm, shall in no wise affect the right of the co-partners to call on the individual making such compromise for his ratable portion of such co-partnership debt, the same as if this law had not been passed.

Rights extended to other joint debtors: exception

SEC. 1291. The above provisions in reference to co-partners of a firm shall extend to all joint debtors, except as provided in section 1292 of this chapter, who are hereby authorized, individually, to compound or compromise for their joint indebtedness, with the like effect in reference to creditors and to joint debtors of the individual so compromising, as above provided in reference to co-partners.

Not to apply to surety

SEC. 1292. The foregoing provisions shall not be construed to apply to any debtor or debtors who, by the express terms of the contract upon which the indebtedness exist or arose, was the principal debtor while the other joint debtor or debtors were sureties.

Judgment against principal and surety.

SEC. 1293. That upon the rendition of any judgment in any court in this territory, if it shall be shown that one or more of the defendants against whom the judgment is to be rendered are principal debtors, and others of the said defendants are sureties of such principal debtor or debtors, the court may order the judgment, so to state, and upon the issuance of an execution upon such judgment, it shall direct the sheriff to make the amount due thereon out of the goods and chattels, lands and tenements of the principal debtor or debtors, or if sufficient thereof cannot be found within his county to satisfy the same, then that he levy and make the same out of the property, personal or real, of the judgment debtor who was surety.

NOTE.—Act February 12, 1874.

CHAPTER LXXVII.

JOINT RIGHTS.

Sec. 1294. On death of joint tenant interest to descend to heirs, not to survivor.
Sec. 1295. Injury by joint tenant to joint property; what action to be brought.
Sec. 1296. All joint obligations to be joint and several.

No right of survivorships in joint tenancy.

SEC. 1294. If any partition be not made between joint tenants the property of those who die first shall not accrue to the survivor or survivors, but descend or pass by devise, and shall be subject to debts, dower, charges, etc., or transmissible to execution or administration, and be considered to every intent and purpose in the same view as if such deceased joint tenants had been tenants in common.

Action by one joint tenant against his co-tenant, etc.

SEC. 1295. If any person shall assume and exercise exclusive ownership over, or take away, destroy, lessen in value, or otherwise injure or abuse any property held in joint tenancy, tenancy in common, or copartenary, the party aggrieved shall have his action of trespass or trover for the injury in the same manner as he would have if such joint tenancy, tenancy in common or copartenary did not exist.

Joint and several obligations.

SEC. 1296. All joint obligations and covenants shall hereafter be taken and held to be joint and several obligations and covenants.

NOTE —Act January 12, 1872.

CHAPTER LXXVIII.

JURORS.

Sec. 1297. County commissioners to select jurors: manner of selection, etc.

Sec. 1298. List delivered to clerk; who shall issue venire.
Sec. 1299. Venire to be returned to clerk; when.
Sec. 1300. Box to be locked; key kept by clerk.
Sec. 1301. Manner of drawing and summoning additional jurors.
Sec. 1302. Selection of grand jurors; time of summons.
Sec. 1303. Selection of additional grand jurors.
Sec. 1304. Who are competent jurors.
Sec. 1305. Who are exempt from serving on jury.
Sec. 1306. Penalty or non-attendance fof jurors.

12th ses. p 56

Manner of selecting jurors.

SEC. 1297. The county commissioners of any county in which a term of the district court is or may be held, shall, at least twenty days prior to the commencement of said term of court, select the names of one hundred persons lawfully qualified to serve as jurors from the county assessor's books of the county, and the names of the persons so selected, after being written on separate slips of paper, shall be deposited in a box to be provided for such purpose, and from the names so deposited the county commissioners shall alternately draw the names of thirty persons who shall be summoned as trial jurors for the next ensuing term of such district court.

NOTE.—Section 1297, act of February 23, 1881.

Duty of clerk and sheriff

SEC. 1298. The list of names so drawn and certified to by the clerks of the county commissioners as selected by them, shall thereupon be delivered to the clerk of the court for which such jury may be drawn. The clerk, upon the receipt of the same, shall immediately issue a venire directed to the seriff of the county, commanding him to summon he persons so named as trial jurors for such term of court, and the sheriff shall summon such named persons at least five days prior to the commencing o suc term of court.

When venire to be returned.

SEC. 1299. The venire, as provided for in section 1298 of this chapter, shall be returned to the clerk of such court by the sheriff aforsaid, at least two days before the commencement of each term of court, and such venire, after its return, shall be subject to the inspection of any officer or attorny of the court.

Box containing names to be locked, etc.

SEC. 1300. The box containg the residue of the names of the jury list as aforesaid, shall, after such drawing, be locked up, and the key deposited with the clerk of the court for which the jury is summoned, and by him safely kept for future use by the aforesaid officer, or as further provided in this chapter.

Other jurors how summoned.

SEC. 1301. When at any time during a term of the court it shall become necessary to summon other jurors than as herein before provided for, the clerk shall, in open court, under the direction of the judge thereof, from such box draw a sufficient number of names to constitute additional trial jurors during such term of court: *Provided*, In case any such jurors so drawn reside at a great distance from the place where the court is held, the court may, in its discretion, dispense with summoning such juror, and order another to be drawn instead thereof, and the clerk shall issue a venire, directed to the sheriff, for the summoning of such person as trial juror, and the sheriff shall proceed forthwith to summon the same as such trial juror, and, with all possible diligence, make return with his proceeding thereon.

Selection of grand jury

SEC. 1302. It shall be the duty of the board of county commissioners of the county, at least twenty days prior to the assembling of a court authorized by law, to inquire into public affairs by the intervention of a grand jury, to select the names of twenty persons eligible to serve as jurors, and, upon a *venire* being issued by the clerk of such court, the sheriff shall, at least five days prior to the meeting of the court, summon said persons to appear on the first day of the next term, and from such panel the court shall select sixteen persons who shall constitute such grand jury.

Grand jury; how completed or new one obtained

SEC. 1303. When, from any cause on the meeting of, or during the term of a court authorized by law to inquire into public offences by the intervention of a grand jury, and a grand jury is wanted, and there is not a sufficient number of jurors present, or those summoned have been discharged, a sufficient number to complete such grand jury, or constitute a new grand or trial jury, as the case may be, it shall be lawful for such judge and sheriff to prepare a list of the names of a sufficient number of persons competent to serve as trial or grand jurors, and deposit such names in a box, and, at any time during the term of the court when a juror shall be required, names of persons shall be drawn therefrom by the clerk, as provided in section 1301 of this chapter.

NOTE —Act January 12, 1872, except where otherwise noted.

12th ses. p. 57.

Qualifications of jurors

SEC. 1304. Any male person of lawful age, who is a citizen of the United States, or has declared his intention to become such, and who is a taxpayer and *bona fide* resident of the county, shall be competent to serve as a grand or trial juror.

NOTE.—Section 1304 act of February 9, 1881.

SEC. 1305. The following persons shall be exempt from serving as grand or trial jurors, viz.:

13th ses. p 101

Exemption from jury duty

All postmasters who have qualified and are acting as such under the laws of the United States; all priests or ministers of the gospel, attorneys and counselors at law, practicing physicians, editors, all county, township or territorial officers; the officers and members of any organized fire department or company in this territory. The number of firemen hereby exempted shall not exceed twenty-eight, including officers for each company organized; and such members from each company shall be selected from the roll of such company according to the seniority of membership; and a list containing the names of such persons shall be made out by the secretary of each such company, and filed with the clerk of the board of county commissioners on the first Monday of December, March, June and September, and any failure to file the list hereby required shall be considered as a waiver of such exemption.

NOTE.—Section 1305 act of March 8, 1883.

Penalty for failure to attend as juror.

SEC. 1306. Any person summoned, as aforesaid, to serve as a juror, who shall fail to attend, unless excused by the court, shall be fined in any sum not exceeding fifty dollars, at the discretion of the court, and be imprisoned in the county jail until such fine is paid.

NOTE —Section 1306 Act of January 12, 1872

CHAPTER LXXIX.

LAWS.

Sec. 1307. Laws, etc.; when to take effect.
Sec. 1308. Laws, etc.. which do not take effect immediately, when to be in force.
Sec. 1309. Form of enacting clause.
Sec. 1310. Secretary authorized to compile laws.
Sec. 1311. Construction.
Sec. 1312. What to omit and what to supply.
Sec. 1313. Declaration of Independence, etc., to be included.
Sec. 1314. Index and marginal notes.
Sec. 1315. May employ assistance; appropriation.
Sec. 1316. Certificate.
Sec. 1317. Copy to be transmitted to each member of the fifteenth legislative assembly.
Sec. 1318. Conflicting acts repeated.

When acts etc., take effect.

Sec. 1307. All acts and joint resolutions which declare that they take effect from and after their passage and approval by the governor, are hereby declared to so take effect only at the seat of government; and in other portions of the territory allowing fifteen miles from the seat of government for each day.

Same.

Sec. 1308. All acts and joint resolutions which do not take effect from and after their passage and approval by the governor, shall take effect and be in force in all parts of this territory upon the day named in such act or joint resolution.

Form of enacting clause

Sec. 1309. That all acts of the legislative assembly of the territory of Montana shall be designated, known, and acknowledged in each such act of said legislative assembly as follows:

Be it enacted by the legislative assembly of the territory of Montana:

Note.—Sections 1307, 1308 and 1309 are from act of January 12, 1872.

Secretary authorized to compile laws

Sec. 1310. That the secretary of the Territory of Montana is hereby authorized and directed to compile, edit and index the laws of the Territory of Montana, of a general and permanent nature in force at the adjournment of the regular session of the fifteenth legislative assembly of the Territory of Montana.

Construction.

Sec. 1311. That all acts and parts of acts passed at the fifteenth regular session of the legislative assembly of the territory which repeal, amend or specify any section, chapter, article or division of the "Revised Statutes of Montana," or of any act of any legislative assembly passed since the enactment of said revised statutes shall be construed to repeal, or amend, or specify the division, chapter, article or section of the "Compiled Statutes of Montana," which contains or embodies the same or like matter, provisions, terms or phrases.

What shall be omitted and what supplied.

Sec. 1312. That in compiling and editing the act of the fifteenth regular session of the legislative assembly entitled "An Act to compile and arrange the general laws of the Territory of Montana, in force at the commencement of the fifteenth regular session of the legislative assembly on the 10th day of January, A. D. 1887," approved March 1, 1887, the secretary of the territory shall omit therefrom such chapter or sections or parts thereof as have been repealed by acts of the fifteenth legislative assembly, and to supply such section or sections or parts of sections as have been enacted in lieu of such repealed chapters or sections or parts of sections by the fifteenth legislative assembly. The secretary shall add to said act all laws of a general and permanent nature in force at the adjournment of the fifteenth regular session of the legislative assembly. That the edition of the "Compiled Statutes of Montana," provided for in the act aforesaid, shall be edited as to contain all laws of a general and permanent nature in force at the adjournment of the fifteenth regular session of the legislative assembly, in one volume, in concise form, under the proper chapter, subjects or titles, as far as practicable, and the title of acts, and the signature of the president of the council and speaker of the house of representatives may be omitted, but the date of the enactment of any law may be noted in said edition. That the secretary of Montana is hereby authorized to alter the numbers, only, of the sections and chapters of the laws compiled in the edition herein provided for so that the same shall appear in consecutive order.

Declaration of Independence, etc, to be included

SEC. 1313. The declaration of independence, the constitution of the United States and the amendments thereto, and the acts of congress relating to all the territories, and particularly those relating to the territory of Montana, shall be included in and printed with the laws provided for in section one of this act.

Index and marginal notes

SEC. 1314. The secretary of the territory shall make, or cause to be made and printed therewith, a full and complete and proper index to all said laws and other matter, by reference to pages and sections, together with marginal notes to each section, setting out in brief the subject matter of the section.

To employ compiler appropriation

SEC. 1315. To carry out the provisions of this act, the secretary of the territory is hereby directed to employ such suitable person or persons as may be necessary to accomplish such compilation and edition of said laws; and for that purpose a sum not exceeding twenty-five hundred dollars, or so much thereof as may be necessary, is hereby appropriated out of the moneys in the territorial treasury not otherwise appropriated, and the territorial auditor is hereby authorized and required, from time to time, upon receiving the proper certificate or certificates from the secretary of the territory, to draw his warrant or warrants therefor on the territorial treasurer in favor of the secretary of the territory: *Provided, however*, That the territory shall not in any wise be liable for any other or additional expense therefor above said sum: *And provided further*, That whenever the moneys expended under the provisions of this act, or any part thereof, shall be

Limit of territorial liability

reimbursed to the territory of Montana by the United States, the sum shall be paid into the treasury of the territory by the officer receiving the same on the receipt thereof

Certificate.

SEC. 1316. Upon the completion of said edition the secretary of the territory shall duly certify under his hand and the seal of the territory to the correctness of said laws, and other matter so edited, compiled and printed, and the laws and other matter so printed and certified shall be received in all courts and tribunals of the territory, and for all other purposes, as prima facie evidence of the originals, which certificate shall appear in printed form therewith.

Shall transmit one copy to each member of legislature.

SEC. 1317. That on the completion of said edition the secretary of the territory shall transmit to each member of the fifteenth legislative assembly a copy of said compiled statutes.

Repeal.

SEC. 1318. All acts and parts of acts in conflict with this act shall be deemed and construed to be governed by the provisions hereof.

NOTE —Sections 1310 to 1318, both inclusive, comprise all of Act to provide for compiling, editing and indexing the general laws of Territory of Montana, in force at the adjournment of the fifteenth lar session of the legislative assembly,' approved March 10, 1887, and sections appear in the same order as in the original of said act

COMMON LAW.

[*See Chapter XVII. ante.*]

CHAPTER LXXX.

LEGISLATURE.

Sec. 1319. Resignations to be addressed to the governor—when; to presiding offic —when.
Sec. 1320. Governor to issue writ of election to fill vacancy.
Sec. 1321. Writ of election to be directed to sheriff.
Sec. 1322. Sheriff shall cause election to be held
Sec. 1323. When district altered or divided, how election to be held.
Sec. 1324. Time and place of regular sessions
Sec. 1325. Certificate to be held as prima fa evidence of election.
Sec. 1326. Temporary organization of council.
Sec. 1327. Permanent organization of council.
Sec. 1328. Term of office of officers of council how removed.

Sec. 1329. Temporary organization of house of representatives.
Sec. 1330. Permanent organization of house of resentatives.
Sec. 1331. Subordinate officers to take an oath.
Sec. 1332. Majority vote necessary for election of officers
Sec. 1333. Relative to absentees.
Sec. 1334. Resignation of members of legislature.
Sec. 1335. Chairman of committees to administer oath in certain cases.
Sec. 1336. Apportionment of members of the council.
Sec. 1337. Apportionment of members of house of representatives.
Sec. 1338. Apportionment for Fergus county.
Sec. 1339. Apportionment for Park county.
Sec. 1340. Repeal.

Vacancy by resignation

SEC. 1319. If any member elected to either house of the legislative assembly shall resign during the recess thereof, he shall address and transmit his resignation, in writing, to the governor; and when any such member shall resign during the session, he shall address his resignation in writing to the presiding officer of the house of which he is a member; which shall be entered on the journal; in which case, and in all cases of vacancies happening or being declared during any session of the general assembly, by death, expulsion, or otherwise, the presiding officer of the house in which such vacancy shall happen shall immediately notify the governor thereof.

Writ of election

SEC. 1320. Whenever the governor shall receive any resignation or notice of vacancy, or when he shall be satisfied of the death of any member of either house during the recess, he shall, without delay, issue a writ of election to supply such vacancy.

To whom writ directed

SEC. 1321. When any vacancy shall happen in the council for a district composed of more than one county, the writ of election shall be directed to the sheriff of the county first named in the law establishing the district; and when the vacancy shall happen in a district which shall have been divided or altered, after the general election next preceding the occurrence of such vacancy, the writ of election shall be directed to the sheriff of the county first named in such old district; and when any vacancy shall happen in either house, for any county which shall have been districted after the general election next preceding the occurrence of such vacancy, the writ of election shall be directed to the sheriff of the old county.

Election.

SEC. 1322. The sheriff to whom any writ of election shall be delivered shall cause the election to supply the vacany to be held within the limits composing the county or district, at the time of the next preceding general election, and shall issue his proclamation or notice for holding the election accordingly and transmit a copy thereof, together with a copy of the writ, to the sheriff of each of the counties within which any part of such old county or district may lie, who shall cause copies of such notice to be set up, and the election to be held accordingly, in such part of their respective counties as composed part of the old county or district, for which the election is to be held at the last preceding general election; and returns shall be made, and the certificate of election granted, in all things as if no division had taken place.

Election in new district

SEC. 1323. When any district or county shall be so altered or divided during the term for which a member shall be elected, and the new district or county shall be authorized to elect their member before the expiration of the term of the former member in that case the election to fill the vacancy shall be held for the district or county as it shall remain after such alteration or division, and not as it was at the last preceding general election.

NOTE —Act January 12, 1872.

Legislative session; when held.

SEC. 1324. The regular sessions of the legislative assembly of this territory shall be held at the capital, and the next regular session thereof shall commence at 12 o'clock M. on the second Monday of January, A. D., 1879, and said sessions shall be held bienially thereafter, commencing at 12 o'clock M. on the second Monday of January of each year, upon which said sessions are to be held under the provisions of this section.

NOTE —Act February 16, 1877

14th ses. p 89

Certificate prima facie evidence.

SEC. 1325. The certificate of election from the clerk of the proper county shall be held and considered as *prima facie* evidence of the right to membership of the person certified therein to be elected for all purposes of organization of either branch of the legislative assembly.

Calling council to order.

SEC. 1326. At the time fixed by the laws of the United States and of this territory for the convening of any regular session of the legislative assembly, the secretary of the territory, or in his absence or inability, then the oldest member present, shall take the chair and call the members of the council elect to order, and shall appoint from the members a clerk *pro tem.* The chairman shall then call over the council districts in their order, and, as the same are called, the persons claiming to be members shall present their certificates and take the oath now prescribed by law, which may be administered by the chief justice or associate justice of the supreme court, or by any person authorized to administer oaths.

Election of council officers

SEC. 1327. After the members elect shall have taken the oath of office or affirmation aforesaid, if there shall be a quorum present, the council shall proceed to the election of the officers prescribed by law, in the order stated therein. The vote shall be by ballot.

Terms of offices in council.

SEC. 1328. The officers of the council shall hold their offices during the session at which they are elected, but may be discharged by a resolution of the council. The clerks and sergeant-at-arms shall control their assistants in their respective departments.

Calling house to order

SEC. 1329. At the same time that is provided for the council being called to order, it shall be the duty of the territorial auditor, and in case of his absence or inability, then the oldest member present in the hall of the house of representatives, to call the persons elected to that body to order, and appoint from those elected a clerk *pro tem.* The several counties and districts of the territory shall then be called over by the chairman in alphabetical order, and as the names of the members elect are called they shall present their certificates and take the oath of office prescribed by law.

Election of house officers

SEC. 1330. As soon as all the members elect present shall have taken the oath or affirmation aforesaid, if there shall be a quorum present, they shall proceed to the election of officers of the honse of representatives authorized by the law of the United States.

Terms of house officers

SEC. 1331. The clerks and sergeant-at-arms shall take the oath of office prescribed by law, and shall hold their offices for the same time and be removed in like manner as is provided for the same officers in the council.

Majority vote elects

SEC. 1332. In all elections for officers of either branch of the legislative assembly, a majority of all the votes given shall be necessary to a choice.

Absentees may be compelled to attend

SEC. 1333. Whenever at the commencement of or during the regular or extraordinary sessions of the legislative assembly, upon a call of either house it shall be found that no quorum of members is present, or if any member or members shall be found absent upon any such call, the members present shall be authorized to direct the sergeant-at-arms, or, if there shall be no sergeant-at-arms of such house, then any other person, to compel the attendance of any or all the absentees: *Provided*, That if the house refuse to excuse such absentee, he shall not be entitled to any per diem during such absence, and shall be liable for the expenses incurred in procuring his attendance

14th ses. p. 89.

Resignation during sitting of legislature.

SEC. 1334. No resignation of a member of the legislative assembly of the territory which shall be tendered during the actual session of the legislative assembly, shall be valid or of any effect until the branch of which the person tendering such resignation is a member shall have accepted the same by a vote of a majority of the members of such branch, exclusive of the person or persons tendering such resignation: *Provided*, That the provisions in this chapter shall apply only to such resignations as are tendered during the sitting of the legislature.

Chairman of committee may administer oath

SEC. 1335. Whenever any special or standing committee of the legislature shall require any person or persons to be sworn prior to making their statement or statements before said committees, the chairman thereof shall be and he is hereby authorized to administer oaths to said witnesses.

NOTE —Section 1325 to 1335 inclusive, act of March 12, 1885

13th ses. p 90.

Apportionment of members of council.

SEC. 1336. The members of the council shall be apportioned to the several counties of this territory as follows:

Beaverhead county, one member.

Custer county, one member.

Deer Lodge county, one member.

All territory embraced within the limits of Gallatin county on March 3, 1883, one member.

Jefferson county, one member.

Lewis and Clarke county, one member.

Dawson and Yellowstone counties, jointly, one member.

Choteau county, one member.

Madison county, one member.

Meagher county, one member.

Missoula county, one member; and

Silver Bow county, one member.

Apportionment of mem of house.

SEC. 1337. The members of the house of representatives shall be apportioned to the several counties of this territory as follows:

Beaverhead county, one member.

Custer county, two members.

Yellowstone county, one member.

Choteau county, one member.

Dawson county, one member.

Deer Lodge county, two members

All territory embraced within the limits of Gallatin county on March 3, 1883, three members.

Jefferson county, one member.

Lewis and Clarke county, two members

Madison county, one member.

Meagher county, two members

Missoula county, two members.

Silver Bow county, three members.

The counties of Lewis and Clarke and Jefferson, one member jointly.

The counties of Madison and Beaverhead, one member, jointly.

NOTE—Sections 1336 and 1337, act of March 8, 1883

Apportionment for Fergus county

SEC. 1338. That the apportionment of two members of the house of representatives to Meagher county in section 2 of an act apportioning members of the legislative assembly shall be deemed and taken to include Fergus county and hereafter one of said two members shall, at any election for representatives, be elected from each of said counties.

Apportionment for Park county.

SEC. 1339. That the apportionment of three members of the house of representatives to all territory embraced within the limits of Gallatin county on March 3, 1883, shall be deemed and taken to include Park county, and hereafter at any election for representatives one of said three members shall be elected in Park county, and two of said three members in Gallatin county.

Repeal.

SEC. 1340. All parts of acts in conflict herewith are hereby repealed.

NOTE—Sections 1338, 1339 and 1340 are respectively sections 1, 2 and 3 and comprise all of "An Act defining the apportionment of members of the house of representatives in the counties of Meagher and Gallatin," approved March 10, 1887.

CHAPTER LXXXI.

LICENSES.

Sec. 1341. Billiard or pool table, theatres, exhibitions, etc., pawnbroker, intelligence office, professional man, assayer.

Sec. 1342. Livery stable, hay yard, etc.

Sec. 1343. Merchant.
Sec. 1344. Auctioneers.
Sec. 1345. Hotels, etc.
Sec. 1346. Retail liquor dealers.
Sec. 1347. Proceedings to obtain license for retail liquor dealer; power to revoke: penalty.
Sec. 1348. Penalty for selling adulterated liquors: license for distiller, etc.; wholesale dealer; penalty.
Sec. 1349. Brewer.
Sec. 1350. Gambling; penalty.
Sec. 1351. Peddler, etc.
Sec. 1352. Skating rink.
Sec. 1353. Toll road, bridge, water company, etc
Sec. 1354. Toll road or water company to make statement of receipts.
Sec. 1355. Laundryman.
Sec. 1356. Lottery, etc.
Sec. 1357. Bowling alley and shooting gallery.
Sec. 1358. Stage or express company.
Sec. 1359. Commercial traveler, drummer, etc.
Sec. 1360. Licenses granted not more than one year nor less than one quarter.
Sec. 1361. Duty of county treasurer.
Sec. 1362. Telephone and telegraph company.
Sec. 1363. Gas and electric light companies.
Sec. 1364. Proportions of licenses paid to territory and county.
Sec. 1365. Amount due for license a prior lien.
Sec. 1366. Penalty for transacting business without license.
Sec. 1367. Penalty if treasurer fails to perform his duty.
Sec. 1368. Manner of ascertaining population of town, etc.
Sec. 1369. Conflicting acts repealed; takes effect July 1, 1887.

SEC. 1341. There shall be levied and collected by the tax collector a license tax as follows:

Billiard and pool table,

First. From each billiard or pool table ten dollars per quarter.

Theatre, etc.

Second. From the manager or lessee of every theater, two dollars per month, and for each exhibition of opera or concert singers, minstrels; sleight of hand performances, legerdemain, and other shows or exhibitions (except that exhibitions and concerts for schools or charitable purposes shall not be subject to the license herein provided for) the same as required for theatrical performances, and every circus shall pay a license of fifty dollars per day and five dollars per day for each side show.

Pawnbroker.

Third. Each pawnbroker, twenty dollars per quarter.

Intelligence office.

Fourth. For each keeper of an intelligence office, five dollars per quarter.

Profesional man

Fifth. Each professional man before practicing as such, all lawyers, dentists, physicians, surgeons, and all other professions, insurance agents and real estate agents, shall pay a license of sixteen dollars per annum: *Provided,* That all persons who draw any legal instrument, deed, power of attorney, or other document for which he charges a fee shall be considered a professional man.

Assayers.

Sixth. All assayers who do a business of two hundred dollars per month and not more than five hundred dollars per month, five dollars per quarter; and all assayers doing a business of more than five hundred dollars per month, ten dollars per quarter.

Livery stabes, corrals, etc.

SEC. 1342. All keepers of livery and feed stables shall pay a license of fifteen dollars per quarter, and all keepers of hay yards, corrals for feeding stock or selling hay shall pay a license of eight dollars per quarter. All keepers of liveries who shall keep and use more than two buggies, carriages, sleighs or other vehicles, shall pay a license of two dollars and fifty cents for each and every such vehicle per quarter in addition to the fifteen dollars above provided; all omnibuses, carriages, express wagons, transfer and freight wagons that are run for hire or profit, in any city or town of more than five hundred inhabitants, drawn by one horse, shall pay two dollars and fifty cents per quarter, and for each additional horse used therewith, two dollars and fifty cents per quarter.

Merchant.

SEC. 1343. Every person who has a fixed place of business, who may deal in goods, wares or merchandise, drugs or medicines, jewelry or wares of precious metals, or who shall expose the same for sale, shall pay a licesnse as follows: Those whose sales are ten thousand dollars or more per month shall constitute the first class, and shall pay a license of forty dollars per quarter; those whose sales are five thousand dollars and under ten thousand dollars per month shall constitute the second class and shall pay a license of twenty dollars per quarter; those whose sales are two thousand dollars and under five thousand dollars per month shall constitute the third class and shall pay a license of fifteen dollars per quarter, and those whose sales are one thousand dollars and under two thousand dollars per month shall constitute the fourth class and shall pay a license of ten dollars per quarter; and those whose sales are five hundred dollars and under one thousand dollars per month shall constitute the fifth class and shall pay a license of five dollars per quarter; and those whose sales are under five hundred dollars per month shall constitute the sixth class and shall pay a license of three dollars per quarter.

Auctioneer.

SEC. 1344. All auctioneers shall procure a license and shall pay therefor as follows: Those who shall sell or offer for sale cattle, horses, mules or other live stock, in any town or city containing two thousand or more inhabitants shall pay twenty-five dollars per quarter: and all auctioneers who shall sell at auction any such stock outside of any such town or city containing less than two thousand inhabitants, shall pay ten dollars per quarter; and auctioneers who shall sell property of any kind at public sale in any place as above specified shall procure a license and shall pay therefor as follows: All such auctioneers who shall do business in any town or city containing two thousand or more inhabitants shall pay fifteen dollars per quarter; and all such auctioneers who shall sell outside of any town or city, or in any town or city containing less than two thousand inhabitants, shall pay ten dollars per quarter or five dollars per month.

Hotels, etc

SEC. 1345. All keepers of restaurants, lodging houses, boarding houses and hotels shall pay a license as follows: Those doing business in the aggregate of less than two thousand dollars per quarter shall pay two dollars and fifty cents per quarter, and all whose business is over two thousand dollars per quarter shall pay two dollars and fifty cents for each additional two thousand dollars or fractional part thereof per quarter, and all such keepers of restaurants, lodging houses, boarding houses and hotels shall make at the end of each quarter a sworn statement of the total amount of their business for the quarter last preceding: *Provided;* That hotel keepers who shall transact business one mile or over from any city, town or village shall not be required to pay the license required in this section.

Retail liquor seller

SEC. 1346. All persons who deal in, sell or dispose of, directly or indirectly, any spirituous, vinous and malt liquors in any quantity less than one gallon shall, before the transaction of such business obtain a license, for which he or they shall pay as follows: In all cities, towns villages or camps, which contain a population of thirty-five hundred or over, five hundred dollars per year; in any city or town, village or camp which contains a population of one thousand and under thirty-five hundred, three hundred and twenty dollar per year. In all cities, towns, villages or camps which contain a population of over three hundred and under one thousand, two hundred and forty dollars per year; and in any city, town, village or camp which contains a population of less than three hundred, one hundred and eighty dollars per year; and any person disposing of any spirituous, vinous [or] malt liquor at any place whatever in quantities less than one gallon, shall pay a license of one hundred dollars per year.

Proceedings to obtain license for wholesale liquor dealer

SEC 1347. Applications to sell malt, spirituous and vinous liquors shall be made to the county clerk, stating the length of time for which license is desired and the place where the business is to be carried on, and shall be accompanied by a petition therefor, signed by ten resident freeholders of the town, ward, or vicinity where the sale of liquor is proposed to take place, setting forth that the applicant is a man of respectable character and standing and a resident of this territory, and praying that a license may be issued to him. The county clerk shall thereupon issue to said applicant a certificate stating that the provisions of the law have been complied with, and upon the presentation of such certificate the county treasurer shall issue the license prayed for: *Provided*, That all licenses so issued must be paid for in advance. The board of county commissioners of the several counties shall have the power to revoke any license issued under the provisions of this act when it shall appear to them that a person so licensed under the provisions of this act has been convicted for violation of any of the laws of this territory relating to the sale of intoxicating liquors.

Certain sales punished

Every person licensed under the provisions of this act who shall give or sell any malt, spirituous, or vinous liquors, or any intoxicating drink to any minor, apprentice, or servant, under twenty-one (21) years of age (except on order of parent or guardian), any Indian, insane or idiotic person or habitual drunkard, or shall keep a disorderly house, shall, on conviction, forfeit and pay for each offence the sum of fifty dollars, one-half to the use of the county and one-half to the informer in any such case, and shall forfeit the license granted to him.

Penalty for selling adulterated liquor

SEC. 1348. Every person so licensed, or any other person who shall intentionally, or otherwise, sell or give away, or direct or permit any person or persons in his employ to sell or give away malt, spirituous and vinous liquors, which shall be adulterated with strychnine, strontia, sugar of lead, or other poisonous substances, shall, on conviction, forfeit and pay the sum of two hundred and fifty dollars for every such offence. That every distiller, manufacturer or rectifier of spirituous liquors shall pay a license of six hundred dollars per year. Every person who shall deal in, sell or dispose of any malt, spirituous, or vinous liquors in quantities greater than one gallon in any city or town of thirty-five hundred inhabitants, or over, shall pay a license of two hundred dollars per year, and in all other cities, towns or places, one hundred and twenty-five dollars per year. Persons so licensed shall not permit any such malt, spirituous or vinous liquors to be drank upon the premises. Any person violating the provisions of this section shall, on conviction, pay a fine of fifty dollars, one-half to the use of the county and one-half to the informer, and shall forfeit the license so granted to him.

Distiller, etc., wholesale dealer.

Penalty.

Brewer, etc.

SEC. 1349. Every brewer or manufacturer of malt liquors whose business amounts to one thousand dollars, or more, per month, shall pay a license of twenty dollars per month; and those whose business amounts to less than one thousand dollars and more than five hundred dollars per month, shall pay a license of ten dollars per month; and all those whose business amounts to less than five hundred dollars per month, and every manufacturer of pop, soda, or other drinks, put up in bottles, except that above specified, shall pay a license of five dollars per month.

Gambling

SEC. 1350. Any person or persons, or association of persons, who shall keep any house or saloon, or room or club rooms where any banking game or game of chance is dealt or played for money, or anything representing money, or having a money value is used, bet, ventured or hazarded in any city, town or village whose population is greater than three hundred persons, shall before starting such business pay to the county treasurer a license of one hundred dollars per quarter, and in addition thereto such person or persons shall pay a license for each table (which table shall not exceed eight feet in length by four feet in width) on which the game commonly called faro is dealt or played, forty dollars per month, and such person or persons shall pay a license for each table (which shall not exceed eight feet in length and four and one-half feet in width) on which the games commonly called "Percentage Stud Horse Poker," or "Percentage Draw Poker," or "Twenty-One," or "High Ball," or "Blue Jay," or "Chuck Luck," or "Short Faro" is dealt or played with cards, of five hundred dollars per month; and such person or persons shall pay for any room wherein the game called "Keno" is played, dealt or conducted, a license of five hundred dollars per month, which shall be exclusive of all other games; and such person or persons shall pay a license for each table on which the game called "Roulette" is played, of five hundred dollars per month; and for each and every other banking game not mentioned in this section, such peason or persons shall pay a license of five hundred dollars per month. In any city, town or village, whose population is less than three hundred persons such person or persons shall pay a license of one-half the amount paid in towns, cities and villages whose population is greater than three hundred persons; but this section shall not be construed to authorize or permit any game prohibited by the laws of this territory. Any person violating any of the provisions of this section shall, upon conviction, be fined in any sum not less than three hundred nor more than one thousand dollars, or imprisonment in the county jail not less than thirty days nor more than six months, or both such fine and imprisonment, in the discretion of the court: *Provided*, that one-half of the fine collected shall go to the person informing; all licenses provided for by sections 1347 and 1350 of this act shall be kept posted in a conspicuous place where such business is carried on.

Penalty for violation

SEC. 1351. That every traveling merchant, hawker or peddler, who shall carry a pack or trunk and shall sell goods, wares or merchandise, shall pay a license of five dollars per quarter. If he travel with one horse and wagon, or other vehicle, and sells goods, wares and merchandise, he shall pay a license of fifteen dollars per quarter; if he travels with two or more horses and wagon, or other vehicle, and sell goods, wares and merchandise, he shall pay a license of twenty dollars per quarter; and if he travels with a pack animal and sells goods, wares and merchandise, he shall pay a license of five dollars per quarter for such pack animal: *Provided*, That no license shall be required to be paid by any person who sells any production of this territory, manufactured or raised by himself.

Peddler, etc.

SEC. 1352. Every keeper of a roller skating rink in cities or towns of three thousand people and upward, *shall procure* a license and shall pay therefor the sum of fifty dollars per quarter; and in towns of one thousand and less than three thousand people, such person or persons shall pay twenty-five dollars per quarter: and in all towns of less than one thousand inhabitants, such person or persons shall pay ten dollars per quarter.

Toll roads, bridges, water company, etc

SEC. 1353. All roads, bridges, or ferries, or water company, or incorporated company, not specified in the provisions of this act, or any other company or association, person or persons taking or receiving toll or selling water in incorporated cities, whose quarterly receipts reach the sum of five hundred dollars, shall pay a license tax of twenty dollars per quarter: those whose quarterly receipts do not exceed five hundred dollars, shall pay a license tax of ten dollars per quarter: those whose quarterly receipts shall reach one thousand dollars, shall pay a license tax of forty dollars per quarter: those whose quarterly receipts shall reach two thousand dollars, shall pay a license tax of eighty dollars per quarter: those whose quarterly receipts shall reach five thousand 'dollars shall pay a license tax of one hundred and fifty dollars per quarter; and those whose quarterly receipts shall reach ten thousand dollars, shall pay a license tax of two hundred and fifty dollars per quarter: *Provided*, That nothing in this section shall apply to water ditches for mining, agricultural and manufacturing purposes.

Toll road or water company to furnish sworn statement of receipts.

SEC. 1354. That it shall be the duty of any corporation or other company, person or persons, receiving or charging toll or water rates for which a license is required, four times in each year to file with the treasurer of the county in which said company is located doing business, or in which they have their office, a sworn statement of all their receipts. And it shall be the duty of said treasurer to examine said report, and he shall have power to hear testimony for and against the same, and if he approve of the same he shall proceed to collect the tax imposed by this act upon said company or corporation, as provided by law in other cases, and if such owner, officer or agent shall fail or refuse to make a report, as above required it shall be the duty of said treasurer to estimate the receipts of such company, corporation or person, according to his best knowledge and information, and proceed to collect license, as provided in section 1353 of this act, and no abatement or diminution of said treasurer's estimate shall be made.

SEC. 1355. That all male persons in this territory who are now, or who may hereafter be, engaged in the laundry business, shall pay a license of five dollars per quarter.

Laundry man

SEC. 1356. Every person who shall carry on any gift, lottery or prize distribution business within this territory, or sell or dispose of any tickets in any lottery or drawing to take place out of this territory, shall pay a license therefor of one hundred and fifty dollars per quarter.

Lottery, etc

SEC. 1357. Every keeper of bowling alley or shooting gallery for gain, shall procure a license, and shall pay therefor the sum of ten dollars per quarter for each alley or gallery so used.

Bowling alley, etc

SEC. 1358. Every stage or express company or incorporation, whose receipts aggregate five hundred dollars or more per quarter, engaged in carrying passengers or express matter, or any person or association of persons engaged in such business, shall procure a license, and shall pay to each and every county into or through which their line may extend for each and every line the sum of ten dollars per quarter.

Stage and express company

SEC. 1359. Every commercial traveler, agent, drummer or other person selling or offering to sell any goods, wares or merchandise of any kind, to be delivered at some future time, or carrying samples and selling or offering to sell goods, wares or merchandise of any kind similar to said samples, to be delivered at some time, and every commercial traveler, agent, drummer or traveling salesman selling or offering to sell or dispose of any gold, silver or plated wares, or jewelry of any description, shall, before carrying on such business, pay a territorial license therefor of one hundred dollars per quarter or three hundred dollars per year; such payment shall be made to and such license by any county treasurer, and the license so issued shall authorize the person named therein to carry on the said business of a commercial traveler in any county of this territory for the period named in such license, and it is hereby made the duty of every justice of the peace, constable, sheriff and all peace officers to demand the license of any such commercial traveler, drummer, agent or other person, who has sold or is offering to sell goods, wares or merchandise in his county; and if such person be found not to have a license as required by this act, or if, upon demand made by any such officer, he shall not exhibit the same, the person so offending shall be guilty of a misdemeanor

Commercial traveler

and upon conviction thereof, shall be fined any sum not less than fifty dollars nor more than one hundred dollars, in the discretion of the court.

Time for which license granted.

SEC. 1360. Licenses may be granted under the provisions of this act for one year or less, at the option of the applicant: *Provided*, That no license shall be granted for a less time than one quarter that [is] mentioned in the rate of assessment of licenses in this act.

Duty of county treasurer

SEC. 1361. Each county treasurer shall make diligent inquiry and examination as to all persons in his county liable to pay licenses required in this act, and it shall be his duty to require each person to state under oath or affirmation the amount of business which he or the firm of which he is a member, or for which he is the agent or attorney, or the association or corporation of which he is the president or officer has done in the last preceding month or quarter, and also to make a statement under oath, if required, in order to carry out the provisions of this act, and thereupon such agent or other person shall procure a license for such month or quarter, for the class of which such party is liable to pay, and in all cases where an under estimate has been made the applicant shall be made to pay double license for the next month or quarter. Such license shall authorize the party obtaining the same in his county, to transact business as provided in such license: *Provided*, That nothing in this act, nor in any license issued under it, shall be so construed as to authorize any person to carry on any business without procuring such additional license as may be lawfully required by the laws of the United States or of any incorporated city or town.

Telephone and telegraph company

SEC. 1362. Each telephone company doing business in this territory shall pay a license of one dollar per annum on each instrument in use; and each telegraph company shall pay a license of one dollar per annum on each of its instruments in use.

Gas and electric company.

SEC. 1363. All gas companies and all electric light companies shall pay a license tax of twenty-five dollars per quarter.

Proportion of liceses to be paid to territory and to county

SEC. 1364. That all moneys collected for county license taxes in the several counties of this territory under the provisions of this act, shall be paid into the county treasury of the county wherein collected, and eighty-five per cent of the amount so collected shall be retained in the county treasury for the use of such county, and the remaining fifteen per cent., together with all amounts so received for any territorial license herein provided for, shall be paid over by the county treasurer to the territorial treasurer for the use of the territory.

Amount of license a lien upon property

SEC. 1365. For the purpose of enforcing the provisions of this act, and to prevent the evasion of the same all property of any kind held, or used in any of the trades, occupations or professions for which a license is required by the provisions of this act, shall be liable for said license, and said license is hereby made a lien on all such property, which lien shall have precedence of any other lien, claim or other demand; and if any person or persons shall fail or refuse to procure the license required by this act before the transaction of the business specified, it shall be the duty of the treasurer of the county to seize any of the property upon which a lien is hereby created or any other property belonging to such person or persons and sell the same in the manner provided for sheriffs on execution, to satisfy said license and costs, and for which said treasurer shall receive a like fee as sheriffs for service of notice and sale on execution or said treasurer may sue for and collect said license and cost by attachment, garnishment or otherwise.

Penalty for doing business without license

SEC. 1366. Any person or persons who shall transact any business, trade or occupation or profession for which a license is required by this act, without first obtaining the same shall be deemed guilty of a misdemeanor, and, upon conviction before any court having competent jurisdiction be fined in any sum not less than ten dollars nor more than one hunderd dollars.

Punishment of treasurer who fails to perform his duty.

SEC. 1367. If any treasurer shall fail or refuse to enforce the provisions of this act as herein directed, he shall be liable and shall pay double the amount of each and every license which he shall so fail to collect together with all costs of suit; and it shall be the duty of the county attorney of the county in which such treasurer resides, upon complaint of any taxpayer in this territory to prosecute such treasurer for the same.

Ascertainment of population

SEC. 1368. For the purpose of ascertaining the population of any town, city or village to secure a proper collection of the license taxes herein provided, the treasurer shall multiply the whole number of votes cast at the last preceding general election by three and the sum thus ascertained shall be the population of said town, city or vilage for the purpose of this act.

Acts repealed

Takes effect July 1, 1887.

SEC. 1369. That chapter XL of the fifth division of the revised statutes ot Montana and all acts and parts of acts in conflict with this act are hereby repealed; *Provided*, That this act shall take effect and be in force from and after July 1st, 1887.

NOTE.—Sections 1341 to 1369 comprise all of "An Act concerning licenses," approved March 10, 1887, and said sections are given in the order in which they appear in said act.

CHAPTER LXXXII.

LIENS.

Sec. 1370. *Mechanics to have liens; extent of.*
Sec. 1371. *Time within which lien must be filed.*
Sec. 1372. *Time of filing statement of indebtedness by all persons other than subcontractors.*
Sec. 1373. *Recorder to keep index of liens filed.*
Sec. 1374. *Liens to have priority in the order of filing by classes.*
Sec, 1375. *Employer's interest in land subject to lien; building may be sold and removed.*
Sec. 1376. *When lien shall attach. Purchaser of building may remove same.*
Sec. 1377. *Suit may be brought in district court to enforce lien.*
Sec. 1378. *Practice and pleading same as in other cases.*
Sec. 1379. *All persons interested to be made parties.*
Sec. 1380. *Death of parties named in preceding section, who to be made parties.*
Sec. 1381. *Court shall ascertain amount of indebtedness.*
Sec. 1382. *Judgment by default—when.*
Sec. 1383. *Judgment where no personal service had.*
Sec. 1384. *Judgment where personal service had.*
Sec. 1385. *Execution to be a special fieri facias*
Sec. 1386. *When suit to be commenced.*
Sec. 1387. *Who shall be included in the term "owner" or "proprietor."*
Sec. 1388. *Duty of creditors to acknowledge satisfaction of lien.*
Sec. 1389. *Satisfaction to be filed with recorder.*
Sec. 1390. *Creditor liable for not acknowledging satisfaction.*

Sec. 1391. Who to be considered sub-contractors.
Sec. 1392. Liens filed under Idaho statute, to be entitled to benefit of this act.
Sec. 1393. Measure of damage when contract is in gold dust.
Sec. 1394. Ranchmen and others to have lien.

Who entitled to lien

SEC. 1370. Every mechanic, builder, lumberman, artisan, workman, laborer or other person or persons, association or partnership or corporation that shall do or perform any work and labor upon, or furnish any material, machinery or fixture for any building, erection, bridge, flume, canal, ditch, mining claim, quartz lode, city or town lot or lots, ranch, railroad, telegraph, telephone or electric light line, gas pipe or water pipe line, or other improvements, upon complying with the provisions of this chapter, shall have for his work or labor done, or material, machinery or fixtures furnished, a lien upon such building, erection, bridge, flume, canal, ditch, mining claim, quartz lode, city or town lots, ranch, railroad, telegraph, telephone, electric light line, gas pipe or water pipe line, or other improvements, to secure the payment of such work or labor done, or material, machinery or fixtures furnished.

NOTE.—Section 1370 is as amended by section 1 of "An Act to amend an act relating to liens of mechanics and others," approved March 9, 1887, and comprises all of said section 1 except the introductory clause thereof as follows: "Section 1. That section 820 of the fifth division of the revised statutes of Montana be amended so as to read as follows"

Time within which lien to be filed

SEC. 1371. It shall be the duty of any person, association, copartnership or corporation wishing to avail himself or itself of the benefits of this chapter to file with the recorder of the county in which the building, erection, bridge, flume, canal, ditch, mining claim, quartz lode, ranch, city or town lots, railroad, telegraph, telephone, or electric light line, gas pipe or water pipe line, or other improvements upon the lands to be charged with the lien is situated, and within ninety days after the things aforesaid have been furnished, or the work or labor done or performed a just and true account of the amount due or owing to him, after allowing all credits and containing a correct description of the property to be charged with said lien, verified by affidavit, but any error or mistake in said account or description shall not affect the validity of said lien, provided the property may be identified by said description.

NOTE—Section 1371 is as amended by section 2 of "An Act to amend an act relating to liens of mechanics and others," approved March 9, 1887, and comprises all of said section 2 except the introductory clause thereof as follows: "Section 2 That section 821 of said chapter be amended so as to read as follows"

Same

SEC. 1372. It shall be the duty of every person and all persons, except as has been provided for subcontractors, who wish to avail himself or themselves of the benefits of this chapter, to file with the recorder of the county in which the building, erection, bridge, flume, canal, ditch, mining claim, quartz lode, ranch, city or town lots, or other improvements upon lands to be charged with lien, is situated, and within ninety days after the things aforesaid have been furnished, or the work or labor done or performed, a just and true account of the amount due or owing to him after allowing all credits, and containing a correct description of the property to be charged with said lien and verified by affidavit.

Duty of recorder.

SEC. 1373. It shall be the duty of the recorder of the county to endorse upon every account the day of its filing, and make an abstract thereof in a book by him to be kept for that purpose, and properly indexed, containing the date of its filing, the name of the person laying or imposing the lien, the amount of such lien, the name of the person against whose property the lien is filed and the description of the property to be charged with the same; for all of which he shall receive the sum of one dollar from the person laying or imposing the lien, which shall be taxed and collected as other costs in case there be suit thereon.

NOTE.—Sections 1372 and 1373 are from act February 13, 1874

Extent of lien.

SEC. 1374. That the lien given by section 1370 of this chapter shall extend to the lot or land upon which any such building improvement or structure is situated to the extent of forty acres if outside of any town or city, or if within any town or city, then to the extent of the whole lot or lots upon which the same is situated. All liens for any work or labor done or material furnished upon the same premises which shall be filed within thirty days after the filing of the first lien on such premises shall entitle the holder therof to share equally pro rata according to the amount of their respective liens in the proceeds arising from the sale of such premises upon the foreclosure of such liens. If, after the expiration of thirty days, other liens shall be filed against such premises, then all liens filed within sixty days after the filing of such subsequent lien shall be liens of the second class, and share pro rata in any proceeds arising from the sale of the said premises which may remain after all liens of the first class have been paid. The liens for work or labor done, or material furnished, as specified in this chapter, shall be prior to and have precedence over any mortgage, incumbrance or other lien made subsequent to the commencement of work on any contract for the erection of such building, structure or other improvement.

Certain liens to share pro rata, and others to be prior.

NOTE 1.—Section 1374 is as amended by section 3 of "An Act to amend an act relating to liens of mechanics and others," approved March 9, 1887, and comprises all of said section 3 except the introductory clause thereof as follows: "Section 3. That section 827 of said chapter be amended so as to read as follows."

SEC. 1375. The entire land to the extent aforesaid upon which any such building, erection or other improvement is situated, including as well that part of said land which is not covered with such buildiing, erection or other improvement, as that part thereof which is covered with the same, shall be subject to all liens created by this chapter, to the extent, and only to the extent, of all the right, title and interest owned therein by the owner or proprietor of such building, erection or other improvement, for whose immediate use or benefit the labor was done, or things were furnished; and when the interest owned in such land, by such owner or proprietor of such building, erection or other improvement, is only a lease-hold interest, the forfeiture of such lease for the non-payment of rent, or non-compliance with any of the other stipulations therein, shall not forfeit or impair such liens so far as concerns the buildings, erections and improvements thereon put by such owner or proprietor charged with such lien, but such building, erection or improvement may be sold to satisfy said lien, and be moved within twenty days after the sale thereof by the purchaser.

Amount of land subject to lien.

SEC. 1376. The liens aforesaid, or work, shall attach to the buildings, erections or improvements for which they were furnished, or the work was done, in preference to any prior lien or incumbrance, or mortgage upon the land upon which said buildings, erections or improvements have been erected or put; and any person enforcing such lien may have such building, erection or improvement, sold under execution and the purchaser may remove the same within a reasonable time thereafter.

Priority of lien over mortgage

SEC. 1377. Any person having a lien under or by virtue of this chapter may bring suit to enforce the same, and to obtain the benefits thereof, in the district court of the county wherein the property on which the lien is attached is situated, without regard to its amount.

Suit to enforce lien.

SEC. 1378. The pleadings, practice, process and other proceedings in the several district courts, in cases arising under this chapter, shall be the same as in

Pleadings.

ordinary civil actions and civil proceedings in said courts, except as herein otherwise provided. The petition, among other things, shall allege the facts necessary for securing a lien under this chapter, and a description of the property charged therewith.

Parties. SEC. 1379. In all suits under this chapter the parties to the contract shall, and all other persons interested in the matter in controversy, and in the property charged with the lien, may be made parties; but such as are not made parties shall not be bound by any such proceedings.

Same. SEC. 1380. In case of the death of any of the parties specified in the immediately preceding section, whether before or after the suit brought, the executor or administrator of such deceased party shall be made plaintiff or defendant, as the case may require, and it shall not be necessary to make the heirs or devisees of such deceased person parties to such suit; but if there be no executor or administrator of such deceased party, then his heirs or devisees may be made parties to such suit; and if any of said heirs or devisees are minors—under the age of twenty-one years—their guardians shall be made parties with them; but if such minors shall have no guardians, the court in which the suit is pending shall appoint guardians *ad litem* for them in the same manner and under the same rules and regulations as guardians *ad litem* are appointed in proceedings for partition of real estate, and the judgment and proceedings of such court in any such suit shall be as binding on such minors as if they were over the age of twenty-one years.

Judgment. SEC. 1381. The court shall ascertain by a fair trial, in the usual way, the amount of indebtedness for which such lien is established, and render judgment for the same, and for costs of suit.

Same. SEC. 1382. Judgment by default shall be rendered against every defendant who, after being summoned or notified according to law, shall not appear and plead or answer within the time allowed in ordinary civil actions.

Same. SEC. 1383. When the debtor has not been served with summons according to law, and has not appeared, but has been lawfully notified by publication, the judgment, if any, for the plaintiff shall be, that he recover the amount of the indebtedness found to be due, and costs of suit, to be levied out of the property charged with the lien thereof, which said property shall be correctly described in said judgment.

SEC. 1384. When the debtor has been served with summons according to law, or appears to the action, the judgment, if for the plaintiff, shall be against such debtor, as in ordinary cases, with the addition that if no sufficient property of the debtor can be found to satisfy the judgment and costs of suit, then the residue thereof be levied as provided in the next preceding section.

Same.

SEC. 1385. The execution to be issued shall be a special *fieri facias*, and shall be in conformity with the judgment, and such writ shall be returnable as ordinary executions; and the advertisment, sale, and conveyance of real or personal estate under the same shall be made as under ordinary executions.

Execution.

SEC. 1386. All actions and suits under this chapter shall be commenced within twelve months from the filing of the aforesaid account or statement and not afterwards, and shall be prosecuted without unnecessary delay to final judgment.

Time for commencing suit

NOTE—Section 1386 is as amended by section 4, of "An Act to amend an act relating to liens of mechanics and others," approved March 9, 1887, and comprises all of said section 4, except the introductory clause thereof as follows "Section 4 That section 839 of the fifth division of the revised statutes of Montana be amended so as to read as follows"

SEC. 1387. Every person including all guardians of minors or other persons, and married women, and any company, association or corporation for whose use, benefit or enjoyment any building, structure or improvement mentioned in section 1370 of this act, shall be constructed, repaired or altered, shall be deemed the owners or proprietors thererof for the purposes of this act; and ever contractor, sub-contractors, architect, builder, engineer, foreman or other person having charge of the construction, repair or alteration in whole or in part of the aforesaid building, structure or improvement, shall be deemed the agent of such owner or proprietor.

Who deemed owner and agent.

NOTE 1—Section 1387 is as amended by section 5 of "An Act to amend an act relating to liens of mechanics and others," approved March 9, 1887, and comprises all of said section 5 except the introductory clause thereof as follows "Section 5 That section 840 of the fifth division of the revised statutes of Montana be amended to read as follows."

NOTE 2.—Section 1370, 1371, 1374, 1386 and 1387, together with the introductory clauses as given in the notes to said sections respectively comprise all of said act of March 9, 1887, except section 6 of said act as follows "Section 6 That sections 821, 822, 823, 824 and 844 of the fifth division of the revised statutes of Montana and all acts and parts of acts in conflict with this act be and the same are hereby repealed"

SEC. 1388. Whenever any indebtedness, which is a lien upon any such real estate, erection, or building, or other improvement, shall be paid and satisfied, it

Satisfaction of lien.

shall be the duty of the creditors, if required, to go before some officer authorized to take the acknowledgment of conveyances of real estate, and acknowledge satisfaction of said lien.

Same.

SEC. 1389. Such satisfaction, being acknowledged and certified, shall be filed with the recorder of the county wherein said lien is of record, who shall thereupon enter satisfaction of such lien upon the record, or the margin thereof, in the same manner as the satisfaction of a mortgage is entered, and shall be allowed the same fee therefor as is allowed for entering the satisfaction of a mortgage, to be paid by the creditor at the time the service is performed.

Penalty for failure to acknowledge satisfaction.

SEC. 1390. If any creditor fail, refuse or neglect to acknowledge satisfaction, as aforesaid, he shall be liable to any person injured to the amount of such injury, and the costs of suit.

Who considered sub-contiactois

SEC. 1391. All persons furnishing things, or doing work, as provided for by this chapter, shall be considered sub-contractors, except such as have therefor contracts directly with the owner or proprietor, his agent or trustee.

Liens under Idaho law.

SEC. 1392. Any person or persons who have heretofore done work and labor, or furnished materials, and have availed themselves of the provisions of an act of the Idaho legislature, entitled "An act for securing liens to mechanics and others," approved January 23, 1864, and has filed, within the time therein prescribed, in the office of the recorder of the county, or in the county clerk's office, in which such building or superstructure is situated, of the amount due them, verified by said act, shall be entitled to all the benefits of this chapter; and all such liens so acquired, under and by virtue of the provisions of said act, shall be as effectual to all intents and purposes as if the same had accrued under and by virtue of this chapter, and the provisions of this chapter shall in all cases be applicable to the enforcement of such liens.

Measure of damages.

SEC. 1393. In all cases when liens have accrued for work and labor done, or materials furnished, which were to be paid for in gold dust or other property, the current value of such gold dust or property in United States treasury notes at the time said work and labor were done, or materials furnished, shall be the true measure of damages, and the court, in ascertaining the same, shall have due regard to the customs of the country prevailing at the time such lien accrued, and under which such work and labor were done, or material furnished; and the court, after ascertaining the value of such gold dust or other property, shall render judgment for the value thereof, and enforce the judgment of the same as required by this chapter.

Lien for care and keeping of animals.

SEC. 1394. That any ranchman, farmer, agistor, or herder of cattle, tavern-keeper, or livery stable keeper, to whom any horses, mules, asses, cattle, or sheep shall be entrusted, and a contract for their keeping be entered into between the parties for the purpose of feeding, herding, pasturing, or ranching, shall have a lien upon said horses, mules, asses, cattle, or sheep for the amount that may be due for such feeding, herding, pasturing, or ranching, and shall be authorized to retain possession of such horses, mules, asses, cattle or sheep until the said amount is paid: *Provided*, That the provisions of this section shall not be construed to apply to stolen stock.

NOTE.—Foregoing chapter is from act January 12, 1872, except where otherwise noted.

CHAPTER LXXXIII.

LOCAL OPTION.

Sec. 1395. Election to be ordered upon application of one-third of the voters of any county.

Sec. 1396. Notice of election; regulations; qualifications of voters.

Sec. 1397. What shall be written or printed on ballots.

Sec. 1398. Duty of judges of election and county commissioners; contests.

Sec. 1399. No election oftener than once in two years.

Sec. 1400. If majority vote "against sale," dealing in intoxicating liquors prohibited.

Sec. 1401. Law applicable.

Sec. 1402. To what sales not applicable.

Sec. 1403. General election law applicable.

Sec. 1404. Penalty for violation.

Sec. 1405. Conflicting laws repealed.

Election to be ordered on on application of one-third of voters.

SEC. 1395. That upon application by petition signed by one-third of the voters who are qualified to vote for members of the legislative assembly in any county in the territory, the county commissioners shall order an election to be held at the places of holding elections for county officers, to take place within forty days after the reception of such petition, to determine whether or not such spirituous liquors as are mentioned in the 1401st section of this act [chapter], shall be sold within the limits of such designated places: *Provided*, That no election held under this act shall be held in any month in which general elections are held, so that such elections as are held under this act shall be separate and distinct from any other election whatever: *Provided*, *further*, That the county commissioners shall determine upon the sufficiency of the petition presented by the tax books of the year before.

Notice of election.

SEC. 1396. That notice of such elections to be held as by this act provided shall be published once a week for four weeks in such newspapers of the county where such elections are to be held as the county commissioners may think proper to give publicity to the election. Such elections shall be held under the same regulations as are now prescribed by law for holding elections for members of the legislative assembly except as otherwise provided by this act. All persons qualified to vote for members of the legislative assembly are qualified to vote under the provisions of this act; *Provided*, That they have actually resided within the territorial limits to be affected thereby at least six months next preceding the election.

Regulations.

Qualification of voters.

Ballots.

SEC. 1397. That all persons voting at any election held under the provisions of this act who are against the sale of such intoxicating liquors as are mentioned in the 1401st section of this act [chapter] shall have written or printed on their tickets Against the sale, and those who favor the sale of the articles mentioned in said 1401st section shall have written or printed on their ballots For the sale.

Duty of judges of election and commissioners.

SEC. 1398. That all judges of elections held as by this act provided shall keep, or cause to be kept, duplicate lists of voters and tally-sheets, and it shall be the duty of such judges to deliver one list of the voters and tally-sheets to the secretary of the Territory of Montana, to be filed in his office, and one list of the voters, ballots and tally-sheets to the county commissioners. The county commissioners shall carefully consolidate the returns and decide all questions and contests arising under elections held by virtue of this act.

If the result of any election shall be against the sale the county commissioners shall publish the same once a week for four weeks in the paper in which they gave notice of the election. This act shall take effect as soon as said publication has been made the time prescribed: *Provided*, No license to sell liquors of any description, prohibited by this act, shall be granted during said time of publication except as to vested rights. Within twenty days from the day on which the county commissioners declare the result, one tenth of the number of voters having voted at such election may petition the judges of the district court, setting out plainly and distinctly the cause of contest, when, if the cause set out is such as impeaches the fairness of the election, or the conduct of the county commissioners, the judge shall grant an order directed to the probate judge, the county clerk and one justice of the peace of the county, requiring them to recount the ballots on a given day and report the result to the next term of the district court of that county, or the term of the court to which the petition may be returnable, at which term the case shall be heard: *Provided*, Ten days' notice has been given the county commissioners of the filing of the petition, but such petition shall not act as a *supersedeas* of the result as declared by the county commissioners, nor shall the judge grant a *supersedeas*, and the contest so instituted shall not be continued by the district court, but must be tried and determined at the term to which the same is returnable: *Provided*, Such term is held, and if the same is not held then at the next regular term of the court, and in the event that any one or more of the plaintiffs or defendants to such contests shall die pending the contest, it shall not be necessary to make parties in place of such deceased party or parties plaintiff or defendant. Either party may subpœna witnesses to prove either fraud in the ballots, the counting thereof, or in the conduct of the county commissioners, or of the judges of the election, and introduce evidence to establish either proposition or the converse thereof. The judgment of the district court shall be final unless the case is carried to the supreme court for review. If the election shall appear to have been fraudulently counted the judge shall have power to declare the result and overrule the action of the county commissioners in the premises.

Contest

SEC. 1399. That if the result of any election held under the provisions of this act shall be "for the sale" or "against the sale," then no other election shall be held in the same county in less than two years thereafter, which must be done upon a new petition as aforesaid, and by otherwise conforming to this act.

No election oftener than once in two years

Dealing in intoxicated liquors prohibited if election "against the sale."

SEC. 1400. That if a majority of the votes cast at any election held as by this act provided shall be "against the sale," it shall not be lawful for any person within the limits of said county to sell or barter for valuable consideration, either directly or indirectly, or give away to induce trade at any place of business, or furnish at other public places, any alcoholic, spirituous, malt or intoxicating liquors, or intoxicating bitters or other drinks, which, if drank to excess will produce intoxication, under penalties hereinafter prescribed.

Sec. 258, fourth division applicable

SEC. 1401. That section 206, fourth division, revised statutes [Section 258, fourth division, compiled statutes], of Montana, in regard to prohibiting the sale or furnishing of spirituous liquors on election days, shall apply to all elections held under the provisions of this act.

To what sales not applicable.

SEC. 1402. That nothing in this act shall be so construed as to prevent the manufacture, sale and use of domestic wines or cider, or the sale of wines for sacramental purposes: *Provided*, Such wines or cider shall not be sold in bar rooms by retail, nor shall anything herein contained prevent licensed druggists from selling or furnishing pure alcohol for medicinal, art, scientific and mechanical purposes.

General election law applicable.

SEC. 1403. That all the provisions of article 1, of chapter 21, of the revised statutes [chapter LIX. of the compiled statutes], of Montana, not inconsistent with the provisions of this act, shall apply to all elections held by virtue of this act with the same force and effect as if incorporated in and made a part of this act.

Penalty for violation.

SEC. 1404. That if a majority of the votes cast at an election held as by this act provided, shall be "against the sale," then and thereafter every person violating the provisions of section 6 of this act, shall, upon conviction, be fined in any sum not exceeding five hundred dollars, or by confinement in the county jail for a period not exceeding six months, or by both such fine and imprisonment.

Conflicting laws repealed.

SEC. 1405. That all laws and parts of laws in conflict with this act be and the same are hereby repealed.

NOTE.—Sections 1395 to 1405 both inclusive, are respectively sections 1 to 11, both inclusive, and comprise all of "An Act to provide for preventing the evils of intemperance by local option in any county in this territory by submitting the question of prohibiting the sale of intoxicating liquors to the qualified voters of such county, to provide penalties for its violation and for other purposes," approved March 10, 1887

CHAPTER LXXXIV.

LORD'S DAY.

Sec. 1406.	*Unlawful to keep open play-houses, etc., on Lord's day.*
Sec. 1407.	*Unlawful to keep open any gambling-house.*
Sec. 1408.	*Violation of this act a misdemeanor.*
Sec. 1409.	*Justices to have jurisdiction under this act.*
Sec. 1410.	*Fines to go to school fund.*

Certain places to be closed on Lord's Day

SEC. 1406. Hereafter it shall be unlawful for any person or persons to keep open any play-house, theatre, dance-house, hurdy-gurdy-house, prize-ring, or race-grounds on the first day of the week, commonly called the Lord's Day.

Same.

SEC. 1407. Hereafter it shall be unlawful for any person or persons to keep open any house or other habitation wherein any game of chance is played, or open any banking game at cards on the first day of the week, commonly called the Lord's Day.

Penalty for violation

SEC. 1408. If any person or persons shall violate the provisions of this chapter, they shall be deemed guilty of a misdemeanor, and, upon conviction thereof, before any court having competent jurisdiction, shall be fined ~~in~~ any sum not less than ten dollars, nor more than one hundred dollars, or be imprisoned in the county jail not less than one nor more than thirty days for such offence, or by both such fine and imprisonment, and shall be adjudged to pay all costs of such prosecution.

Jurisdiction.

SEC. 1409. Justices of the peace shall have jurisdiction in all cases arising under the provisions of this chapter.

Fines for benefit of schools

SEC. 1410. All fines collected under this chapter shall be paid into the county treasury of the county where such conviction was had, and shall be for the benefit of the common schools of said county.

CHAPTER LXXXV.

MARRIAGE.

Sec. 1411.	*Marriage a civil contract.*
Sec. 1412.	*When marriage shall not be contracted.*
Sec. 1413.	*Who may solemnize marriages.*
Sec. 1414.	*License must be obtained.*

Sec. 1415. Consent of parent or guardian of minor.
Sec. 1416. What license shall contain.
Sec. 1417. When license refused.
Sec. 1418. What evidence clerk may require.
Sec. 1419. Duty of person solemnizing the marriage.
Sec. 1420. Fee of clerk.
Sec. 1421. Penalty for violation by officiating person or clerk.
Sec. 1422. Penalty for misconduct of officiating person.
Sec. 1423. Want of jurisdiction of person officiating; effect of.
Sec. 1424. Cetificate or copy prima facie evidence.
Sec. 1425. Marriage legitimatizes children.
Sec. 1426. Minister, etc. shall give certificates.
Sec. 1427. No form of ceremony required.
Sec. 1428. Validity of marriage contracted without Montana.
Sec. 1429. Fines for benefit of common schools.
Sec. 1430. Act repealed.
Sec. 1431. Takes effect September 1, 1887.

A civil contract

SEC. 1411. Marriage is a civil contract to which the consent of the parties capable in law of contracting, is essential.

When marriage shall be contracted.

SEC. 1412. No marriage shall be contracted while either of the parties shall have a husband or wife living, nor where the male is under eighteen years of age, or the female is under sixteen years of age nor between parties who are nearer of kin than second cousins, computing by the rules of civil law; *Provided*, That nothing in this act shall be construced as invalidating the marriage relation between two persons nearer of kin than second cousins who may have contracted such marriage prior to the passage of this act

Who may solemnize marriage.

SEC. 1413. Marriage may be solemnized by any judge of a court of record, by any justice of the peace in the county in which he has been elected or appointed by the governor of the territory, or by any regularly ordained minister who is in good standing in the religious denomination to which he belongs. Marriages may also be solemnized by religious societies according to the usages of such societies.

License must be obtained.

SEC. 1414. Previous to the solemnization of any marriage in this territory a license for that purpose must be obtained from the clerk of the county wherein the marriage is to take place.

Consent of parent or guardian of minor.

SEC. 1415. Where either party is a minor no license shall be granted without the written consent of the father, if living, if not, then of the mother of such minor or of the guardian or person under whose care and government such minor may be, which written consent shall be proved by the testimony of at least one competent witness.

License, what to contain

SEC. 1416. When application shall be made for a license to the county clerk, he shall upon the granting of such license state therein the christian and surnames of the fathers of both parties; the christian and maiden names of the mothers of both parties; the christian and surnames of both parties; the residence of both parties, their places of birth, their respective ages, their color, and whether previously married, which license shall prior to the issuing thereof be entered of record in the office of the county clerk, in a suitable book to be provided for that purpose.

License, when refused.

SEC. 1417. If on such testimony being given it shall appear that either of the parties is legally incompetent to enter into such contract, or that there is any impediment in the way, or if either party is a minor, and the consent mentioned in section 1415 shall not be given the said county clerk shall refuse to grant a license.

Clerk may require evidence.

SEC. 1418, In case of personal application for a marriage license, the county clerk may in his discretion require that the necessary information be given under oath, and he is hereby authorized to administer oaths to such applicants for such purpose. When parties apply by mail for such license their statement of the facts necessary to properly make out such license must be accompanied by an affidavit as to the correctness thereof, taken before a justice of the peace or notary public, or some other person authorized to administer oaths; and in case of a minor, the consent of the parent or guardian must be given in the same manner.

Duty of person solemnizing marriage.

SEC. 1419. No person authorized to solemnize marriages shall perform such ceremony until the parties have given him the license issued by the county clerk for their marriage; and when he has completed any such ceremony, he shall enter upon such license a certificate of such marriage showing when and where it occurred, and such certificate shall be attested by two witnesses to such ceremony; he shall, within three months after such marriage has been solemnized, return said license and certificate to the county clerk who shall record the certificate in the same book where the said marriage license is recorded.

Fee of clerk.

SEC. 1420. Before issuing any marriage license as provided in this act the county clerk may and it is hereby made his duty to demand and receive a fee of two dollars which shall be full payment for the issuance and recording of said license and for the recording of the certificate of the person solemnizing the marriage.

Penalty for failure to grant or record certificate

SEC. 1421. Every person solemnizing a marriage who shall neglect to make and deliver to the county clerk a certificate thereof, within three months after having solemnized such marriage, shall forfeit for such neglect a sum not less than ten nor more than fifty dollars; and any county clerk who shall neglect to record such certificate so delivered within one month after its delivery, shall forfeit the like penalty.

Penalty for false certificate.

SEC. 1422. Every person who shall wilfully make and deliver a false certificate of marriage or pretended marriage or undertake to join others in marriage knowing he is not lawfully authorized so to do, or knowing any legal impediment to the proposed marriage, he shall, on conviction in any court of competent jurisdiction, be fined in a sum not exceeding five hundred dollars, and be imprisoned in the territorial prison until such fine is paid.

Want of authority in person officiating; effect of.

SEC. 1423. No marriage solemnized before any person professing to be a judge, or justice or minister, shall be deemed or regarded void; nor shall the validity thereof be in any way affected on account of any want of jurisdiction or authority, provided it be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

Certificate and copy prima facie evidence.

SEC. 1424. The original certificate of marriage, made by the judge, justice, minister or governor, as prescribed in this act, and the record thereof by the county clerk, or a copy of such record, duly certified by the county clerk, shall be received by all courts and in all places as presumptive evidence of such marriage.

Marriage legitimatizes children.

SEC. 1425. Illegitimate children shall become legitimatized by the subsequent marriage of their parents with each other.

Certificates of marriage to be given.

SEC. 1426. Whenever a marriage shall have been solemnized pursuant to the provisions of this act, the person who solemnized the same shall give to each of the parties, on request, a certificate under his hand, specifying the names, ages and places of residence of the parties married, the names and residence of at least two witnesses who were at such marriage, and the time and place thereof.

No form required

SEC. 1427. In the solemnization of marriage no particular form shall be required, except that the parties shall solemnly declare, in the presence of the magistrate or minister, or of attending witnesses, that they take each other as husband and wife, and in any case there shall be at least two witnesses present at the ceremony.

Marriage contracted elsewhere valid

SEC. 1428. All marriages contracted without this territory which would be valid by the laws of the country in which the same were contracted, shall be valid in all courts and places in this territory.

Fines for benefit of schools.

SEC. 1429. All fines arising under this act in consequence of a breach of this act, shall be paid into the county treasury for the use of the common schools.

Act repealed.

SEC. 1430. Chapter 43 of the fifth division of the revised statutes of Montana, and all acts and parts of acts in conflict with this act are hereby repealed.

Takes effec Sept 1, 1887.

SEC. 1431. This act shall take effect and be in force from and after the first day of September, 1887.

NOTE.—Sections 1411 to 1431 both inclusive, are respectively sections 1 to 21 both inclusive, and comprise all of "An Act concerning marriage," approved March 9, 1887.

CHAPTER LXXXVI.

MARRIED WOMEN.

Sec. 1432. Property exempt from husband's debts.
Sec. 1433. May do business in her own name.
Sec. 1434. Declaration of sole trader to be acknowledged and recorded.
Sec. 1435, Rights and liabilities after such record.
Sec. 1436. Responsible for maintenance of her children.
Sec. 1437. Statement under oath if investment exceeds $10,000.
Sec. 1438. Husband not responsible for debts.
Sec. 1439. Legal identity protected.
Sec. 1440. Conflicting laws repealed.
Sec. 1441. Takes effect from passage.
Sec. 1442. Her services presumed to be on her separate account.
Sec. 1443. May be executrix, etc.
Sec. 1444. May sue and be sued as if sole.
Sec. 1445. Husband not liable for her debts.
Sec. 1446. Liability for contracts as to separate property.
Sec. 1447. May make a will; limitation.

Sec. 1448. May make contracts.
Sec. 1449. May contest husband's will.
Sec. 1450. Conflicting laws repealed.

Separate property exempt from husbands debts

SEC. 1432. That the property owned by any married woman before her marriage, and that which she may acquire after her marriage, by descent, gift, grant, devise, or otherwise, and the increase, use, and profits thereof, shall be exempt from all debts and liabilities of the husband, unless for necessary articles procured for the use and benefit of herself and her children under the age of eighteen years; *Provided, however*, That the provisions of this chapter shall extend only to such property as shall be mentioned in a list of the property of such married woman as is on record in the office of the register of deeds of the county in which such married woman resides.

NOTE —Act January 12, 1872.

May carry on business in her own name

SEC. 1433. Married women shall have the right to carry on and transact business under their own name and on their own account, by complying with the regulations prescribed in this chapter.

Declaration.

SEC. 1434. Any married woman residing within this territory, desirous to avail herself of the benefit of this chapter, shall make her declaration before any person authorized to take acknowledgment of conveyances that she intends to carry on business in her own name and on her own account, specifically setting forth the nature of the business she intends to carry on and transact, and from that date shall be individually responsible in her own name for all the debts contracted by her by virtue of said business, the declaration to be recorded in the office of the county recorder of the county in which said business is to be transacted and carried on.

Authority to do business in her own name.

SEC. 1435. After such declaration has been duly recorded as heretofore provided, the person so making her declaration as aforesaid shall be entitled to carry on her business in her own name, and the property, revenue, money, and debts and credits shall belong exclusively to said married woman, and shall not be liable for any of the debts of her husband, and she shall be allowed all the privileges and be liable for all the legal processes now or hereafter provided by law against debtors and creditors.

Liable for maintenance of her children

SEC. 1436. Any married woman availing herself of the benefit of this chapter shall be responsible for the maintenance of her children.

SEC. 1437. No married woman shall commence or carry on business on her own account under the provisions of this chapter, when the amount originally invested in said business exceeds the sum of ten thousand dollars, unless the declaration provided for in section 1435 contain a statement, under oath, that the surplus of money above ten thousand dollars invested in said business did not come from any funds belonging to her husband.

Statement under oath if investment exceeds $10,000

SEC. 1438. The husband of the wife availing herself of the benefit of this chapter shall not be responsible for any debts contracted by her in the course of said business, without the special consent of said husband, given in writing, nor shall the separate property of said husband be taken on execution for any debts contracted by her.

Husband not responsible for her debts.

NOTE—Act February 4, 1874

SEC. 1439. That from and after the passage of this act, women shall retain the same legal existence and legal personality after marriage as before marriage, and shall receive the same protection of all her rights as a woman, which her husband does as a man; and for any injury sustained to her reputation, person, property, character, or any natural right, she shall have the same right to appeal in her own name alone to the courts of law or equity for redress and protection that her husband has to appeal in his own name alone: *Provided*, This act shall not confer upon the wife a right to vote or hold office except as is otherwise provided by law.

Legal identity protected; rights

SEC. 1440. All laws or portions of laws inconsistent with the foregoing are hereby repealed.

Conflicting laws repealed

SEC. 1441. This act shall take effect and be in force from and after its passage.

Takes effect from passage.

NOTE—Sections 1439, 1440 and 1441 are respectively sections 1, 2 and 3 and comprise all of "An Act to declare and protect the legal and personal identity of married women," approved March 3, 1887

SEC. 1442. That all work and labor performed by a married woman for a person other than her husband and children shall, unless there is a written agreement on her part to the contrary, be presumed to be performed on her separate account.

Services presumed to be on separate account

SEC. 1443. That a married woman may be an executrix, administratrix, guardian, or trustee, and may bind herself and the estate she represents without any act or assent on the part of her husband.

May act as executrix, etc

SEC. 1444. That a married woman may sue and be sued in the same manner as if she were sole.

May sue and be sued.

Husband not liable for her debts

SEC. 1445. That a husband shall not be liable to be sued upon a cause of action which originated against his wife prior to their marriage, nor shall he be liable to pay any judgment that may be recovered against his wife.

Liable for her own contracts.

SEC. 1446. That the contracts made by a married woman, in respect to her separate property labor or services, shall not be binding upon her husband, nor render him or his property liable therefor; but she and her separate property shall be liable on such contracts in the same manner as if she were sole.

May make a will.

SEC. 1447. That a married woman may make a will in the same manner and with the same effect as if she were sole, except that such will shall not, without the written consent of her husband, operate to deprive him of more than one-third of her real estate or of more than one-third of her personal estate.

May make contracts.

SEC. 1448. That a married woman may make contracts, oral or written, sealed or unsealed, and may waive or relinquish any right or interests in any real estate, either in person or by attorney in the same manner, to the same extent and with the like effect as a married man may do.

May contest husband's will.

SEC. 1449. That a widow may at any time within three months after the probate of the will of her deceased husband file in the probate court a writing signed by her, waiving any provisions the husband may have made for her in his will and claiming such portion of his estate as she would have been entitled to if he had died intestate, and she shall thereupon be entitled to the same portion of his estate, real and personal, that she would have been entitled to if he had died intestate. That when, after the probate of such will, legal proceedings are instituted. wherein its validity or effect is drawn in question, the probate court may, within said three months, on petition of said widow and after such notice as it may order, extend the time for filing the aforesaid waiver and claim until the expiration of three months from the termination of such legal proceedings.

Conflicting acts repealed.

SEC. 1450. That all acts and parts of acts in conflict with the provisions of this act be and the same are hereby repealed.

NOTE —Sections 1442 to 1450, both inclusive, are respectively sections 1 to 9, both inclusive, and comprise all of "An Act concerning the rights of married women," approved March 7, 1887

CHAPTER LXXXVII.

MILITARY.—MILITIA.

Sec. 1451. Citizens may organize into companies, regiments and batteries.
Sec. 1452. Commander-in-chief and officers of his staff.
Sec. 1453. How orders distributed.
Sec. 1454. Duties of officers.
Sec. 1455. By-laws and rules of companies.
Sec. 1456. Members of companies limited.
Sec. 1457. Election of officers and commissions.
Sec. 1458. Members to take an oath.
Sec. 1459. How called into service.
Sec. 1460. How armed and drilled.
Sec. 1461. Minimum days for exercise and drill.
Sec. 1462. Security given for arms.
Sec. 1463. Compensation when in service.
Sec. 1464. Compensation for use of necessary animals.
Sec. 1465. Misappropriation of public property.
Sec. 1466. Uniform.
Sec. 1467. How certain expenses paid.
Sec. 1468. Dues and fines, how collected.
Sec. 1469. How members discharged.
Sec. 1570. Resignations.
Sec. 1471. Penalty for not providing suitable uniform.
Sec. 1472. Inspection—amount to be received by each company annually.
Sec. 1473. Drill, target practice and encampment.
Sec. 1474. Exempt from jury service.
Sec. 1475. Report of adjutant-general.
Sec. 1476. Conflicting acts repealed.

14th ses. p 95.

Organization.

SEC. 1451. For the purpose of creating greater efficiency in the militia system, it shall be lawful for any citizens to embody and organize themselves into companies, regiments and batteries, in manner and form, and subject to the provisions and restrictions hereinafter prescribed, and such organization shall hereafter be known as the national guard of Montana, and shall at all times be subject to the orders of their officers.

Commander-in-chief and staff.

SEC. 1452. The governor of Montana shall be commander-in-chief of the national guard of Montana, and no militia company, regiment or battery shall be organized without permission of the governor and commander-in-chief in writing. He shall have authority to appoint and commission such staff officers as he may deem necessary to aid him in the transaction of militia affairs: *Provided*, That the staff shall not consist of more than seven, viz:

One adjutant general.
One inspector general.
One commissary general.
One quartermaster general.
One ordinance officer.
One mustering officer.
One surgeon general.

And they shall hold their commission during the pleasure of the governor, without compensation.

Duties of adjutant-general.

SEC. 1453. The adjutant general shall distribute all orders of the commander-in-chief, and shall obey all orders relative to carrying into execution and perfecting any system of military discipline established by law. He shall annually make a return in duplicate of the militia of Montana, with their arms, accoutrements and ammunition, according to such form as may be prescribed by the secretary of war of the United States, one copy of which he shall deliver to the commander-in-chief, and transmit the other to the president of the United States, on or before the first Monday in February: he shall annually, in December, lay before the auditor an account, with vouchers, of his expenditures as adjutant general.

Duties of other officers

SEC. 1454. The inspector general, the commissary general, the quartermaster general, the ordinance officer, the surgeon general, and the mustering officer shall perform such service as the commander-in-chief may direct.

Organization in counties.

SEC. 1455. In each county the citizens may organize themselves into companies and batteries as herein provided; and each company and battery so organized may ordain and establish such by-laws, rules and regulations as they may deem necessary for their proper government, and as may not be inconsistent with this act, or the organic act and laws of Montana, or the United States of America.

Number in company.

SEC. 1456. Each company shall consist of not less than thirty nor more than one hundred men, rank and file.

Company and regiment officers.

SEC. 1457. The members of each company shall have power to elect a captain, a first lieutenant, and a second lieutenant; and when more than five companies have been duly organized and united they may form and organize themselves into a regiment, and elect a full complement of regimental officers; all of which said officers shall be elected in the presence of the mustering officer, or some other officer of the governor's staff detailed for that purpose, and who shall preside at such election, and certify to the governor the result thereof. The governor shall then commission the officer or officers so elected, unless in his opinion such appointment or appointments would be detrimental to the good of the service, in which case he shall order a new election.

Oath

SEC. 1458. All members of the national guard of Montana shall take an oath before the mustering officer, or the staff officer detailed by the governor for that purpose, to support the constitution of the United States, the organic act and laws of Montana, and to obey the commands of their officers for the period or three years.

How called into service

SEC. 1459. Said companies, and other organizations herein provided for, shall be subject solely to the direct call of the governor of Montana, and of the regularly constituted civil authorities, for the suppression of insurrection or riot, or the repelling of invasion, or the enforcement of the execution of the laws according to the provisions of the constitution of the United States and the organic act and laws of Montana; and in all cases of demand or requisition for a military force by the sheriff or mayor, it shall be by application to the governor and commander-in-chief.

14th ses p. 95.

How armed, drilled and governed

SEC. 1460. All such companies, regiments and batteries, when organized, shall be armed and drilled, as near as practicable, in accordance with the system of the United States army for like organizations; and while in actual service, shall be governed by the principles of the military laws of Montana, and rules and articles of war of the United States.

Parade drill, etc

SEC. 1461. Every such company, regiment, or battery shall, immediately upon its organization, fix certain days, not less than three in number, upon which, in each and every year, and at such hours as may be specified, it shall meet for public parade and military exercise, and for drill at such other times as may be provided by the rules and by-laws of such organization.

Entitled to use public arms, etc.

SEC. 1462. Such companies and batteries shall be entitled to use the public arms and ammunition of Montana, to be drawn upon the requisition of the commanding officer upon the adjutant general of Montana;

Provided, however, that there shall be no arms issued except a bond in twice the full value of such arms be deposited with the adjutant general of Montana, which said bond shall be conditioned upon [for] the return of such arms when demanded by the governor or adjutant general of Montana, and secured by at least two good and sufficient sureties to be approved by the governor.

Compensation while in actual service.

SEC. 1463. Each and every member of such organization shall receive one dollar and fifty cents per day, one dollar and fifty cents per night, or three dollars for each day and night together, and the usual United States army rations, when serving under the order of the governor to suppress riots, or to enforce the civil law, to be paid out of the county treasury, on the order of the county commissioners, if such service is requested by the county officers; and when called into active service by the governor, in case of invasion, riot, or insurrection, they shall receive a like compensation, to be paid out of the treasury of Montana on the order of the governor.

Same

SEC. 1464. Whenever any portion of the national guard organized under this act shall be called out to aid the civil authorities, as provided in section 1459 of this chapter, they shall be allowed a fair and reasonabe compensation for the use and keep of any animals necessarily used by them during such time, to be paid as prescribed in said section 1463.

Penalty for selling etc, arms, etc.

SEC. 1465. Any person found guilty of selling, disposing of, secreting, detaining, or refusing to give up any of the arms, accoutrements, ordnance stores. camp or garrison equipage, or munitions of war belonging to Montana, or who shall in any way injure any of the same, or any arsenal or armory belonging to or rented by Montana, or rented by any company, regiment, or battery organized under this act, shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars, or shall be imprisoned in the county jail for the term of not more than three months, or both, at the discretion of the court.

Uniform.

SEC. 1466. The uniform of such organizations may be such as each company may select; but the uniform of the staff shall be that of the United States army officers of like grade, with the exception that the buttons worn shall bear the coat of arms of Montana.

Payment for transportation, etc.

SEC. 1467. The governor shall draw his warrant upon the territorial treasurer for such sums as are necessary for the care and transportation of the territorial arms, ammunition, and ordnance stores, for the printing of such blanks as may be necessary for the proper management of the national guard and for the necessary traveling expenses of the officers of the general staff when detailed for special service, which sum shall not exceed five hundred dollars per annum; all such accounts to be sworn to by the adjutant general of Montana as correct and necessary, 14th ses p. 95.

SEC. 1468. That the fines and dues imposed by the organizations hereinbefore mentioned may be collected by process of law, as other debts are collected. Collection of fines

SEC. 1469. No member of the national guard shall be dishonorably discharged unless he has been tried by a court martial constituted as prescribed by the constitution and by-laws of the company of which he is a member, or by the United States army regulations, and the sentence has been approved by the commander-in-chief. Court martial.

SEC. 1470. All resignations must be approved by the adjutant general after having been accepted by the organization of which the resigning officer or soldier is a member. Resignation.

SEC. 1471. Any commissioned officer or member of the National Guard of Montana refusing or neglecting to provide himself with a suitable uniform shall forfeit, if an officer, his commission; if a non-commissioned officer or private, the sum of ten dollars, to be collected by the adjutant general and paid into the company treasury of which company such persons are members. Penalty for failure to procure uniform.

NOTE —Sections 1451 to 1471, both inclusive, from act of March 10, 1885

SEC. 1472. The commander-in-chief shall, once in each year, cause an inspection to be made by the inspecting officer of his staff of each company organized under this act, and if duly organized and formed on examination of the roll and report of the inspecting officer to be fully up to the standard of numbers, drill and discipline, shall receive directly from the public treasury, upon a warrant drawn by the commander-in-chief to the order of the company commander, the sum of five hundred dollars per annum, and the company commander shall pay the same to the company treasurer, taking his receipt therefor in duplicate, one of which said duplicate receipts shall be returned to the adjutant general within twenty days after the receipt by such company commander of the said warrant. Inspection and pay

Drill and target practice; payment of expenses.

SEC. 1473. Whenever five or more companies are organized under this act, the commander-in-chief may require them to meet and go into camp, at any point in this territory he may designate, for a period of not more than three days in each year, for the purpose of battalion drill, regimental drill and target practice. Whenever any such encampment is ordered the expense of transporting such companies thereto and of their actual subsistence during the time of such encampment and the transportation therefrom shall be paid out of the territorial treasury on warrants drawn by the governor therefor, but no per diem shall be allowed either officers or men. Whenever such encampment is ordered, it shall be the duty of every company, regimental and staff officers to be present thereat and participate therein, unless he shall procure from the surgeon general a certificate that the condition of his health is such as to render it imprudent for him to participate therein. Such certificate shall be forwarded to the adjutant general, and the officer may thereupon be excused.

Exemption from jury service.

SEC. 1474. The members of all military organizations, duly organized, uniformed and equipped, under the provisions of this act, shall be exempt from serving on juries during the period they shall remain members thereof.

Report of adjutant general.

SEC. 1475. It shall be the duty of the adjutant-general, on or before the first day of December, A. D. 1888, and biennially thereafter, to make to the governor full and detailed report of the condition, arms and equipments of the national guard of Montana, which said report shall be transmitted by the governor to the legislative assembly.

Repeal.

SEC. 1476. All acts and parts of acts in conflict herewith are hereby repealed.

NOTE—Section 1472 to 1476, both inclusive, are respectively sections 1 to 5, both inclusive, of "An act to amend an act entitled, 'An act to organize and regulate the militia,' approved March 10, 1885," approved March 10, 1887, and comprises all of said act of March 10, 1887, except the introductory clause to section 1 thereof, as follows: "Section 1. That section 22 of an act entitled 'An act to organize and regulate the militia,' approved March 10, 1885, be and the same is hereby amended so as to read as follows, to-wit."

CHAPTER LXXXVIII.

MINES AND MINING RECORDS, MINING TUNNELS AND RIGHTS OF WAY TO MINES.

Sec. 1477. Discoverer of lode to record declaratory statement within twenty days of discovery.

Sec. 1478. Records of mining claims heretofore discovered.
Sec. 1479. What entitles party to record.
Sec. 1480. Extent of location.
Sec. 1481. Extent of lode discovered and recorded prior to passage.
Sec. 1482. Penalty for removing stakes or destroying notice.
Sec. 1483. What course to pursue to prevent forfeiture of claim.
Sec. 1484. Takes effect from passage.
Sec. 1485. Fee of county recorder for filing.
Sec. 1486. Certified copies of affidavit to be admitted in evidence.
Sec. 1487. Location of mining tunnel to be recorded.
Sec. 1488. Person pre-empting tunnel to have three hundred feet on each side.
Sec. 1489. Right of way through other claims.
Sec. 1490. To run one hundred feet on tunnel within one year.
Sec. 1491. Pre-emptor's right for ore yard.
Sec. 1492. All mining district records to become county records on being deposited in recorder's office.
Sec. 1493. Duty of district recorder to deposit records in county recorder's office.
Sec. 1494. Penalty for refusal of county recorder to receive records.
Sec. 1495. Right of way over and across the lands of others.
Sec. 1496. For convenience of working owner of mining claim to have right of way for ditch, tunnel, etc.
Sec. 1497. Petition to judge for right of way.
Sec. 1498. Citation to require appearance of parties.
Sec. 1499. Hearing of petition and order awarding right of way; appointment of commissioners to assess damages.
Sec. 1500. Commissioners to examine and report.
Sec. 1501. Report may be set aside and other commissioners appointed.
Sec. 1502. Upon payment of damages awarded petitioners entitled to right of way.
Sec. 1503. Appeals from assessment of damages.
Sec. 1504. Trial of appeal.
Sec. 1505. Rights of appellee upon giving bond.
Sec. 1506. When appellee to pay costs.
Sec. 1507. Costs on appeal; tender of payment of damages.

13th ses. p. 95.

Declaratory statement.

SEC. 1477. Any person or persons who shall hereafter discover any mining claim upon any vein or lode, bearing gold, silver, cinnabar, lead, tin, copper or other valuable deposits, who shall hereafter discover or locate any placer deposit of gold, or other deposit of minerals, including building stone, limestone, marble, coal, salines and saline springs, clay, sand or other mineral substances having a commercial value, shall, within twenty days thereafter, make, and file for record in the office of the recorder of the county in which said discovery or location is made, a declaratory statement thereof, in writing, on oath made before some person authorized by law to administer oaths describing such claim in the manner provided by the laws of the United States.

13th ses. p. 95.

Records heretofore made admitted in evidence.

SEC. 1478. All records of placer mining locations, or locations of valuable mineral deposits, which have heretofore been made in the county records of the county in which the same may be situated, shall have the same force and effect as though such record had been authorized by law, except in cases where the rights of third persons had been acquired before the passage of this act, and such records shall be admitted in evidence before any court in the same manner as the records of location of quartz or lode mining claims: *Provided further*, That the provisions of this chapter shall only be construed to impart notice to the public of such claim, but no person shall by reason of this chapter acquire any or further rights.

NOTE.—Sections 1477 and 1478 act of March 5, 1883.

Discovery prior to record.

SEC. 1479. That in order to entitle any person or persons to record in the county recorder's office of the proper county, any lead, lode or ledge, there shall first be discovered on said lode, lead or ledge, a vein or crevice of quartz, or ore with at least one well defined wall.

Length and width of lode claims.

SEC. 1480. Claims on any lead, lode, or ledge, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, hereafter discovered, shall consist of not more than fifteen hundred linear feet along the lead, lode, or ledge, and not more than three hundred feet, and not less than twenty-five feet on each side from the center of said lead, lode, or ledge, for working purposes; *Provided*, That the provisions of this chapter shall not be so construed as to include claims recorded prior to the passage of this chapter.

Same.

SEC. 1481. All lode claims heretofore discovered and recorded pursuant to the law, and the possessory title to which shall have been preserved according to law, shall entitle the owner or owners thereof to surface ground along the course of the vein three hundred feet on each side from the centre of said vein; *Provided*, That such width shall not be permitted to interfere with any vested or possessory rights of any person or persons, corporation or corporations, which have intervened and have been preserved to the time of the taking effect of this article, but parties desiring to avail themselves hereof shall so signify by a record which shall show that they so elect, or if they so desire, they may limit the surface ground on each side of the centre of the vein to any width not less than twenty-five feet.

Penalty for removing stakes, etc.

SEC. 1482. Any person who shall remove any stake or monument placed on any mining claim, or who shall obliterate, deface, or destroy any notice placed thereon, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars, or imprisonment not exceeding one year, or both such fine and imprisonment, in the discretion of the court.

NOTE—Act of February 11, 1876, except where otherwise specially noted

Proof of annual labor.

SEC. 1483. That section 1 of an act entitled "An act concerning the representation of quartz lodes," approved February 27, 1885, be amended so as to read as follows:

Section 1. The owner or owners of any quartz lode claim who shall perform or cause to be performed the annual labor or make the improvements required by the laws of the United States, in order to prevent a forfeiture of the claim may at any time during the year, or within sixty days after the termination of said year in which said work was done or improvements made, file in the office of the county clerk and recorder of the county in which said claim is situated an affidavit or affidavits of the person or persons who performed such labor or made such improvement, showing:

First. The name of the lode and where situated.

Second. The number of days' work done and the character and value of the improvements placed thereon.

Third. The date or dates of performing said labor and making said improvements.

Fourth. At whose instance or request said work was done or improvements made.

Fifth. The actual amount paid for said labor and improvements, and by whom paid when the same was not done by the owner or owners of said quartz claim.

Takes effect.

SEC. 1484. This act shall take effect and be in force from and after its passage.

NOTE—Sections 1483 and 1484 are respectively sections 1 and 2 and comprise all of "An act to amend an act entitled 'An act concerning the representation of quartz lodes,' approved February 27, 1885," approved March 9, 1887

Fees for filing.

SEC. 1485. The clerk and recorder of the county in which said affidavit or affidavits are filed shall record the same in a book kept for that purpose, and be entitled to a fee of one dollar for recording each separate affidavit. When the affidavits are made jointly by two or more persons he shall be entitled to an additional fee of twenty-five cents for each name after the first; and said fee shall be the only one to which the recorder shall be entitled for filing and recording said affidavits, and indexing the same.

Certified copies prima facie evidence.

SEC. 1486. The affidavit or affidavits named in the preceding sections, or copies thereof duly certified by the recorder of the county. shall be received or admitted in evidence in any court of justice in this territory, and be *prima facie* proof of the facts recited therein.

NOTE—Sections 1485 and 1486 from act of February 27, 1885

Record of tunnel location

SEC. 1487. That if any person or persons shall locate a tunnel claim for the purpose of discovery and mining, he or she shall record the same, specifying the place of commencement and the course thereof, with the names of the parties interested therein.

Rights of tunnel locator.

Sec. 1488. That any person or persons so pre-empting any tunnel have the exclusive right to three hundred feet on each side from the centre of said tunnel on any and all lodes that he or they may discover in the course of said tunnel: *Provided*, That none of said lodes, leads or ledges were discovered and recorded previous to the pre-emption of said tunnel, in accordance with an act passed by the legislative assembly of the territory of Montana, entitled, "An act relating to the discovery of gold and silver quartz leads, lodes or ledges, and the manner of their location."

Right of way.

SEC. 1489. That any person or persons who may work any tunnel or tunnels shall have the right of way through any and all lodes, leads or ledges that may lie in the course of any of said tunnels: *Provided*, That all quartz ore or mineral taken from said tunnel from leads, lodes or ledges belonging to parties other than the said tunnel company, shall be deposited on the surface by said tunnel company and belong to the original occupants or owners of said lead, load or ledge.

Shall run 100 feet first year

SEC. 1490. That in order to hold any tunnel claims to the use of themselves, their heirs and assigns, they shall, before the expiration of one year from the date of pre-emption, run to the distance or depth of one hundred feet on said tunnel.

Ore yard.

SEC. 1491. That any person or persons who shall pre-empt any tunnel claim shall be entitled to three hundred feet on each side of the mouth of said tunnel for the purpose of a quartz or ore yard.

NOTE—Act of January 12, 1872

Mining district records made county records.

SEC. 1492. That all mining district records, of all lead, lode, ledge, ranch, water or mill claims, that are now or shall be deposited within the next ninety days hereafter succeeding the passage of this chapter, in their respective county recorder's office, shall become a part and parcel of said county records, and shall be evidence in any court or courts of competent jurisdiction, and have the same force and effect as if such records had been recorded in the county recorder's office when first filed with the mining district records.

Duty of mining district recorders

SEC. 1493. That it shall be the duty of all mining district recorders to file any and all records pertaining to all lead, lode, ledge, ranch, water and mill claims, in their respective county recorder's office, and, upon failure to do so, they shall be deemed guilty of a misdemeanor, and, upon conviction thereof, may be fined in a sum not to exceed one thousand dollars, or imprisoned in the county jail not to exceed one year, or both such fine and imprisonment, and shall be subject to a suit in a civil action for damages.

Duty of county recorder.

SEC. 1494. That it shall be the duty of the county recorder, when any such district records are tendered him, to receive the same, and place them on file in his office; for which he shall receive a fee of fifty cents, to be paid by the district recorder; and upon his refusal to receive said district records, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, may be fined in a sum not to exceed one thousand dollars, or imprisoned in the county jail not to exceed one year, or both such fine and imprisonment, and shall be subject to a suit in a civil action for damages.

NOTE—Act of January 12, 1872, except where otherwise specially noted

Right of way for mining claims.

SEC. 1495. The congress of the United States by an act approved July 26, 1866, and an act amendatory thereto, approved July 9, 1870, has provided that the local legislatures of the several states and territories may provide rules for working mines, involving easements, drainage, and other necessary means to complete development of mines upon which patents shall be granted by the United States. in the absence of necessary legislation by congress. And whereas, there has been no legislation by congress upon the subject; therefore,

Be it enacted by the legislative assembly of the Territory of Montana:

The proprietor, owner or owners of mining claims, whether patened under the laws of the United States, or held under the local laws and customs of this territory, shall have a right of way for ingress and egress, for the necessary purposes, over and across the lands or mining claims [patened or otherwise] of others as hereinafter prescribed.

When and for what purpose right of way granted.

SEC. 1496. Whenever any such mine or mining claim shall be so situated that it cannot be conveniently worked without a road thereto, or a ditch to convey the water thereto, or a ditch or a cut to convey the water therefrom, or without a flume to carry water and tailings therefrom, or without a shaft or a tunnel thereto, which road, ditch, cut, flume, shaft, or tunnel shall necessarily pass over, under, through, or across any lands or mining claim owned or occupied by others either under a patent from the United States or otherwise, then shall such first mentioned owner or owners be entitled to a right of way for such road, ditch, cut, flume, shaft, or tunnel over, under, through and across such other lands or mining claims, upon compliance with the provisions of this article.

Petition for right of way.

SEC. 1497. Whenever the owner or owners of any mine or mining claim shall desire to work the same, and it is necessary to enable him or them to do so successfully and conveniently, that he or they shall have a right of way for any of the purposes mentioned in the foregoing sections; and, if such right of way shall not have been acquired by agreement between him or them, and the claimants or owners of the land or claims, over, under, across, and upon which he or they seek to establish such right of way, it shall be lawful for him or them to present to the judge of the district court of the Territory of Montana, within and for the county in which such right of way, or some part thereof, sought to be enforced is situated, or to which such county is attached for judicial purposes a petition, praying that such right of way be awarded to him or them. Such petition shall be verified and contain a particular description of the character and extent of the right sought, a description of the mine or claim of the petitioner, and the claim or claims and the lands to be affected by such right or privilege, with the names of the occupants or owners thereof. It may, also, set forth any tender or offer hereinafter mentioned, and shall demand the relief sought.

Citation and service thereof.

SEC. 1498. Upon the receipt of such petition, and filing thereof with the clerk of such court, the judge shall direct a citation to issue under the seal of such court, to the owners named in the petition of mining claims and lands to be affected by the proceedings, requiring them, and each of them, to appear before the judge on a day therein named, which shall not be less than ten days from the service thereof, and show cause why such right of way should not be allowed as prayed for; such citation shall be served on each of the parties in the manner prescribed by law for serving summons in ordinary proceedings at law.

Hearing; appointment of commissioners

SEC. 1499. Upon the return of the citation, or upon any day to which the hearing shall be adjourned, the judge shall proceed to hear the allegations and proofs of the respective parties, and, if upon such hearing he is satisfied that the claims of the petitioner can only be conveniently worked by means of the privilege prayed for, he shall make an order, adjudging and awarding to the petitioner such right of way, and shall appoint three commissioners, who shall be disinterested parties and residents of the county, to assess the damages resulting to the lands or claims affected by such order.

Duty of commissioners

SEC. 1500. The commissioners so appointed shall be sworn or affirmed to faithfully and impartially discharge their duties, and shall proceed without unreasonable delay to examine the premises, and shall assess the damages resulting from such right or privilege prayed for and report the amount of the same to the judge appointing them, and if such right of way shall affect the property of more than one person or company, such report shall contain an assessment of damages to each company or person.

Report may be set aside.

SEC. 1501. For good cause shown the judge may set aside the report of such commissioners and appoint three other commissioners, whose duties shall be the same as above mentioned.

Upon payment, party may occupy right of way.

SEC. 1502. Upon the payment of the sum assessed as damages, as aforesaid, to the persons to whom it shall be awarded, or a tender thereof to them, then the person or persons petitioning, as aforesaid, shall be entitled to the right of way as prayed for in their or his petition, and may immediately proceed to occupy the same and to erect thereon such works and structures and make therein such excavations as may be necessary to the use and enjoyment of the right of way so awarded.

Appeal.

SEC. 1503. Appeals from the assessment of damages made by the commissioners may be made and prosecuted in the proper district court by any party interested at any time within ten days after the filing of the report of the commissioners, and a written notice of such appeal shall be served upon the appellee in the same manner as summonses are served in civil actions. The appellant shall file with the clerk of the court to which the appeal is made a bond with sureties, to be approved by the clerk, in the amount of the assessment appealed from in favor of the appellee, conditioned that the appellant shall pay any costs that may be awarded to the appellee, and abide any judgment that may be rendered in the cause.

Trial of appeals

SEC. 1504. Appeals shall bring before the appellate court only the propriety of the amount of damages, and may be tried by the court or before a jury as other cases in the court.

No stay, if appellee gives bond.

SEC. 1505. The prosecution of any appeal shall not hinder, delay or prevent the appellee from exercising all the rights and privileges mentioned in section 1502 of this chapter: *Provided*, That the appellee shall file with the clerk of the court in which the appeal is pending a bond, with sufficient sureties, to be approved by the clerk, in double the amount of the assessment appealed from, conditioned that the appellee shall pay to the appellant whatever amount he may recover in the action.

Costs

SEC. 1506. If the appellant recover fifty dollars more damages than the commissioners shall have awarded, or the appellee shall offer to allow judgment against him to be taken, the appellee shall pay the costs of the appeal, otherwise the appellant shall pay such costs.

NOTE —Sections 1495 to 1506, both inclusive, are from act of January 4, 1872.

Same

SEC. 1507. The costs and expenses of proceedings under the provisions of this chapter, except as herein otherwise provided, shall be paid by the party making the application: *Provided, however*, That if the applicant shall, before the commencement of such proceedings, have tendered to the parties owning or occupying the lands or mining claims a sum equal to or more than the amount of damages recovered by the defendant or defendants, then all of the costs and expenses shall be paid by the party or parties owning the lands or mining claims affected by such right of way, and who appealed and resisted the claim of the applicants thereto.

NOTE —Section 1507 from act of February 13, 1874

CHAPTER LXXXIX.

MINING SHAFTS; SAFETY APPARATUS.

Sec. 1508. Safety apparatus to be provided for mining shaft.
Sec. 1509. Penalty for violation.
Sec. 1510. Suit for damages may be maintained.
Sec. 1511. Takes effect July 1, 1887.

Safety apparatus to be provided for mining shaft.

SEC. 1508. It shall be unlawful for any person or persons, company or companies, corporation or corporations, after the first day of July, A. D. 1887, to sink or work through any vertical shaft where mining cages are used at a greater depth than three hundred feet, unless the said shaft shall be provided with an iron bonneted safety cage, to be used in the lowering and hoisting of the employes of such person or persons, company or companies, corporation or corporations. The safety apparatus, whether consisting of eccentrics, springs or other device, shall be securely fastened to the cage and shall be of sufficient strength to hold the cage loaded at any depth to which the shaft may be sunk. The iron bonnet aforesaid shall be made of boiler sheet iron of a good quality, of at least three-sixteenths of an inch in thickness and shall cover the top of said cage in such manner as to afford the greatest protection to life and limb from any matter falling down said shaft.

Penalty for violation.

SEC. 1509. Any person or persons, company or companies, corporation or corporations, after the first day of July, A. D. 1887, who shall neglect, fail or refuse to comply with the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars.

Suit for damages.

SEC. 1510. Nothing contained in this act shall be so construed as to prevent recovery being had in a suit for damages for injuries sustained by the party so injured, or his heir, or administrator, or administratrix, or anyone else now competent to sue in an action of such character.

Takes effect July 1, 1887

SEC. 1511. This act shall take effect and be in force on and after the first day of July, A. D. 1887.

NOTE—Sections 1508 to 1511, both inclusive, are respectively sections 1 to 4, both inclusive, and comprise all of "An act concerning the use of safety cages and iron bonnets in mining shafts," approved March 5, 1887

CHAPTER XC.

MONTANA HISTORICAL SOCIETY.

Sec. 1512. Annual appropriation for the Montana historical society.
Sec. 1513. Duties of officers, reports, etc.
Sec. 1514. Appropriation for printing reports.

R. S. p. 407.

Annual appropriation,

SEC. 1512. That the sum of one hundred and fifty dollars be, and the same is hereby appropriated each year out of any money in the treasury not otherwise appropriated, to the historical society of Montana, to be expended for the purchase of manuscripts and books, illustrating the early history of the region of country now embraced within this territory, and in paying the postage and express charges thereon, and and for such necessary printing as its officers may deem necessary to be expended by the president, secretary and librarian thereof.

Auditor to issue warrant.

SEC. 1513. That on or before the first day of June, 1873, and each year thereafter before said date, it shall be the duty of the territorial auditor, upon request of the officers of the historical society mentioned in section 1512 of this chapter, or any two of them, to draw his warrant on the territorial treasurer for the sum of one hundred and fifty dollars, payable to the order of said officers, or any one of them, and deliver the same to them, or some one of them, in pursuance of this chapter, and annually thereafter, to draw and deliver like warrant on or before June first of each year, and to deliver the same as herein provided in this section, and according to section 1512 of this chapter, in like form and with like intent, and payable on like terms, as other warrants on the treasury: *Provided*, That the officers of said society shall, annually, on or before December first, of each year hereafter, make to the governor of the territory a report of the expenditures of said money and the condition of their library with such suggestions as to its increase and usefulness as may occur to them, with such other information as in

Annual report of Society.

their judgment would be of interest to the people of the territory, and which said report the governor shall transmit to the legislative assembly: *And provided further*, That if the said auditor shall see fit, he may at any time require security for the faithful application of said moneys so appropriated, and unless the said society shall accept the terms and conditions of this section imposed as to its reports, and signify the same to said auditor within six months from the taking effect of this chapter it shall not be entited to avail itself of the privileges and advantages conferred by this chapter thereafter.

NOTE.—Sections 1512 and 1513 act of May 7, 1873

Ex ses p 10.

Appropriation for publication of contributions

SEC. 1514. Whenever the historical society of Montana shall cause to be published any one or more additional volumes of its contributions, it shall be the duty of the auditor of this territory to draw his warrant on the territorial treasurer in favor of the treasurer of said society, for the expense of the publishing thereof: *Provided*, That the expense of said publication shall not exceed the cost of volume one of the said contributions of said society heretofore published, to-wit: seven hundred and fifty dollars.

NOTE —Section 1514 act of July 21, 1879

CHAPTER XCI.

MONTANA LIBRARY.

Sec. 1515. What constitutes the Montana library.
Sec. 1516. Board of directors.
Sec. 1517. Librarian; appointment and salary of.
Sec. 1518. Room and fixtures; arrangement of books, ect.
Sec. 1519. Regulations.
Sec. 1520. Exchange of books, etc.
Sec. 1521. To rent room, etc.
Sec. 1522. Chairman and secretary of board.
Sec. 1523. Historical department.
Sec. 1524. Catalogues.
Sec. 1525. Payment of freight, mail and express charges.
Sec. 1526. Annual report.
Sec. 1527. Exchanges.
Sec. 1528. How books taken from rooms.
Sec. 1529. Penalty for injuring books, etc.
Sec. 1530. Payment of accounts.
Sec. 1531. Annual appropriation.
Sec. 1532. Deposit of official reports.

Sec. 1533. Bond of librarian.
Sec. 1534. Additional appropriation.
Sec. 1535. Conflicting acts repealed.
Sec. 1536. Employment and duty of janitor.
Sec. 1537. Salary of janitor.

What constitutes the library

SEC. 1515. The books, pamphlets, papers, maps, charts, manuscripts, paintings, engravings, and other property belonging to the territory, now in either division of the Montana library, or which shall hereafter be added to the same by purchase or donation, shall constitute the Montana library.

Board of directors.

SEC. 1516. The board of directors of the Montana library shall consist of the chief justice of the supreme court, the associate justices of the supreme court and the secretary of the territory, who shall have entire control and direction of the same, subject to the provisions of this act.

Appointment and salary of librarian.

SEC. 1517. It shall be the duty of the governor, by and with the advice and consent of the legislative council, immediately after the passage of this act, and biennially thereafter, to appoint some suitable person to be librarian of the Montana library, who shall receive a monthly salary not to exceed fifty dollars per month, and shall perform such duties as shall be required by the board of directors.

Room fixtures; arrangement of books, etc.

SEC. 1518. The board of directors are hereby authorized and required to procure a suitable room or rooms, with the necessary furniture, shelving and other fixtures, for the use of said library, and to cause the books, papers, pamphlets, maps, charts, etc., to be properly placed and arranged therein.

Regulations.

SEC. 1519. The board of directors shall have power to make such rules and regulations, not inconsistent with this act, for the regulation of the library under their charge as they may deem proper, and may prescribe penalties for the violation thereof, which shall be collected by any action in the name of the territory of Montana in any court of competent jurisdiction.

Exchange of books, etc

SEC. 1520. The board of directors of the Montana Library may sell or exchange any surplus or duplicate copies of books, pamphlets, papers, maps or charts which may now or hereafter belong to the library, and use the money arising from such sale for the benefit of the library.

To rent, room, etc.

SEC. 1521. The board of directors of the Montana Library are hereby authorized to rent, for such a period as they may think proper, not exceeding five years at a time, a suitable room or rooms for the use of the library, and they shall also cause to be procured fuel, light and other necessaries for the use thereof.

Chairman and secretary of board

SEC. 1522. The chief justice shall be *ex-officio* chairman of the board of directors and the librarian shall be *ex-officio* secretary to the board, but not a member thereof. Any three members of the board shall constitute a quorum for the transaction of business, and they shall hold stated meetings semi-annually in January and July of each year, and call meetings at such other times as may be required.

Historical department

SEC. 1523. There shall be established and maintained with the Montana Library a historical department, the object of which shall be to collect, preserve and publish the natural and political history of the territory. For this purpose the librarian shall procure as far as possible all writings, histories, letters, lectures, essays, maps, charts and books relating to said territory and its history and carefully preserve the same. In like manner he shall procure specimens of the minerals, flora and fauna of the territory, and cause the same to be carefully labelled with the date of procuring the same and the location where produced; and in case of voluntary contributions the name of the donor shall be added thereto. He shall cause the same to be carefully placed in boxes or cases suitable for examination, and retain the same within the library. The said librarian shall also procure full copies of all newspapers heretofore or hereafter published in the territory and cause the same to be bound in suitable volumes and deposit and keep the same in the library. In like manner he shall procure at least one copy of all pamphlets, magazines and books published or written in the territory for the use of the library. He shall cause the pamphlets and magazines to be bound in volumes of suitable size for preservation.

Catalogue.

SEC. 1524. The librarian shall prepare a catalogue of the books, manuscripts, pamphlets, charts, etc., which, when required by the board of directors, shall be printed for the use of the library and copies thereof furnished to the governor and other officers of the territory.

Freight, express and mail charges to be paid

SEC. 1525. The librarian is hereby authorized to pay reasonable freight, express and mail charges upon books or other documents sent to the said library by the general or state governments, or by private parties, taking proper vouchers therefor, and upon the presentation of such vouchers the territorial auditor shall, at the end of each quarter in the year issue a warrant upon the territorial treasury [in favor] of such librarian for the amount due for such freight, express and mail charges at the time.

Annual report.

SEC. 1526. The chairman of the board of directors on or before the 31st day of December in each year shall report to the governor the condition of the library, the number of volumes purchased during the year, and the cost thereof, the number of volumes received by donation, the number of volumes injured or lost, if any, and such suggestions and further information as may be deemed desirable.

Exchanges.

SEC. 1527. The librarian is hereby authorized and directed to make exchanges with other libraries, of supreme court reports, statutes, journals, legislative documents, and other books, on such terms as may be directed by the board.

Books taken from rooms for what purpose

SEC. 1528. No person is authorized to take from the library rooms any book, pamphlet, paper, map, chart, manuscript, or anything thereto belonging, except that such law books as may be necessary may be taken from the library to the court room and returned the same day; and members of the legislative assembly shall have the right to take such books as may be necessary for their use from the library to the legislative halls during the sessions thereof, being responsible for the proper return of the same; but all persons of good character shall be permitted to visit the library and to examine and read the books therein and to take such memoranda therefrom as they may desire.

Penalty for injuring books, etc

SEC. 1529. If any person shall injure, deface or destroy any book, pamphlet, picture, or other property belonging to the library, he shall forfeit and pay to the librarian double the value thereof, or of a set to which it belongs, if a set is broken by its loss, which forfeiture shall be recovered in an action in the name of the territory of Montana, [in] any court of competent jurisdiction.

Payment of accounts.

SEC. 1530. All accounts for the rent of library rooms, for fuel, lights, and other necessaries, and for the purchase of books, furniture and fixtures, shall be made out by the librarian, and sworn to by him, and approved by the chairman of the board of directors and presented to the territorial auditor, who shall file the same in his office and draw the proper warrant upon the territorial treasurer for the payment thereof.

SEC. 1531. There is hereby appropriated annually for the salary of the librarian the sum of six hundred dollars, and for the purchase of books, furniture and fixtures the further sum of four hundred dollars. Annual appropriation

SEC. 1532. There shall be deposited with the librarian, for the use of the library one dozen copies of each and every official report which may be printed by the legislature or under its authority. Deposit of official reports

SEC. 1533. The librarian shall be required to give a bond in the sum of one thousand dollars for the faithful discharge of his duties and the preservation of the property of the said Montana library. Bond of librarian.

SEC. 1534. In addition to the annual appropriation herein provided for, there is hereby appropriated the sum of three thousand dollars for the purpose of purchasing and filling up the broken sets of laws, reports, statutes in said library and additional text books. The money hereby appropriated shall be expended under the direction of the board of directors and for the purpose aforesaid, and for no other purpose. Additional appropriation.

SEC. 1535. The act entitled "An act regulating the Montana library," approved February 21, 1881, and all other acts or parts of acts in conflict herewith are hereby repealed. Conflicting acts repealed.

NOTE—Sections 1515 to 1535, both inclusive, are respectively sections 1 to 21, inclusive, both and comprise all of "An act reorganizing and consolidating the Montana Library," approved March 10, 1887

SEC. 1536. The supreme court of the Territory of Montana is hereby empowered and authorized to employ a janitor, whose duty it shall be, under the direction of the justices of that tribunal, to care for the offices assigned to them for judicial purposes, to care for and have charge of the supreme court room when the supreme court is in session, and to care for the laws and miscellaneous divisions of the Montana library. 13th ses p 116 Employment and duty of janitor.

SEC. 1537. Such janitor shall receive for his services the sum of three hundred dollars a year, to be paid in monthly installments, upon the certificate of the chief justice and clerk of the supreme court, presented to the auditor of the territory, and the auditor is authorized to draw his warrant for such monthly payment upon the territorial treasurer, who shall thereupon pay the same out of any moneys in the treasury not otherwise appropriated. Salary of janitor.

NOTE—Sections 1536 and 1537 act of March 8, 1883

CHAPTER XCII.

MORTGAGES, CHATTELS AND REAL.

Sec. 1538. Requisite to validity of chattel mortgage.
Sec. 1539. Acknowledgment.
Sec. 1540. Filing of mortgage and duty of recorder.
Sec. 1541. Limit of duration of mortgage.
Sec. 1542. Renewal of mortgage.
Sec. 1543. Effect of filing affidavit.
Sec. 1544. Rights of subsequent mortgagee.
Sec. 1545. Fee for filing renewal and receipt.
Sec. 1546. Mode of attachment of mortgaged chattels.
Sec. 1547. Recorder's fees.
Sec. 1548. Certified copy in case of loss of original.
Sec. 1549. Extent of provisions of this chapter.
Sec. 1550. Foreclosure.
Sec. 1551. Sheriff's fees.
Sec. 1552. Satisfaction of mortgage.
Sec. 1553. Penalty for selling mortgaged chattels.
Sec. 1554. Penalty for destroying, concealing, etc.
Sec. 1555. Real and personal mortgages by incorporated company.

12th ses. p. 3.

Acknowledgment and affidavit, essential to validity.

SEC. 1538. No mortgage of goods, chattels or personal property shall be valid as against the rights and interests of any other person than the parties thereto, unless the possession of such goods, chattels or personal property be delivered to and retained by the mortgagee, or the mortgage provide that the property may remain in the possession of the mortgagor, and be accompanied by an affidavit of all the parties thereto, or, in case any party is absent, an affidavit of those present and of the agent or attorney of such absent party, that the same is made in good faith to secure the amount named therein and without any design to hinder or delay the creditors of the mortgagor, and be acknowledged and filed as hereinafter provided.

Acknowledgment.

SEC. 1539. Every mortgage of goods, chattels or personal property shall be acknowledged by the mortgagor or person executing the same in the manner provided for the acknowledgment of conveyances of real property before some officer authorized by law to take acknowledgments of deeds.

Shall be filed in office of recorder

SEC. 1540. Every mortgage of goods, chattels or personal property, together with the affidavit of the parties thereto, or a true copy thereof, certified to be correct by the recorder or person before whom the acknowledgment has been taken, shall be filed in the office of the recorder of deeds of the county where the mortgagor resides, or, in case he is not a resident of this territory, then in the office of the recorder of deeds of the county where the goods, chattels or personal property may be at the time of the execution of the mortgage; and such recorder of deeds shall, on receipt of such mortgage or copy, endorse thereon the time of receiving the same, and file and keep the same in his office for the inspection of all persons, and shall enter in a book properly ruled and kept for that purpose, the names of all the parties, the names of the mortgagors, to be alphabetically arranged, the date of such mortgage, the consideration thereof, the date of its maturity, and the time of filing the same.

How long valid against creditors, etc.

SEC. 1541. Every mortgage of goods, chattels or personal property made, acknowledged and filed as provided by the laws of this territory shall thereupon if made in good faith, be good and valid as against the creditors of the mortgagor or subsequent purchasers or mortgagees, from the time it is so filed until the maturity of the entire debt or obligation secured thereby and for the period of sixty days thereafter. *Provided*, That the entire period of time such mortgage shall be valid and binding against the creditors of the mortgagor and subsequent purchasers and mortgagees shall not exceed one year and sixty days except by a compliance with the provisions of section 1542 of this act.

Renewal of mortgage

SEC. 1542. Every mortgage of goods, chattels or personal property made, acknowledged and filed as provided by the laws of this territory may be renewed at or before the maturity of the debt or obligation secured thereby in case such debt or obligation or any part thereof be unpaid or unfulfilled by filing an affidavit showing the date of such mortgage, the name of the mortgagor and mortgagee, the date of filing the same, the amount of the debt or obligation secured thereby, and the amount of the debt justly owing at the time of filing such affidavit or the conditions of the obligation unfulfilled, the time to which the same is extended, which time shall not exceed one year, and that such debt or obligation was neither made nor renewed or extended to hinder, delay or defraud the creditors or subsequent mortgagees of the mortgagor, which affidavit shall be subscribed and sworn to by the mortgagee before an officer authorized to administer oaths, and filed in the office where such mortgage therein described is filed, and thereupon the clerk and recorder of deeds of such county shall attach such affidavit to the mortgage therein described and note the date of filing thereof opposite the entry of the mortgage therein described in the book provided by law for the entry of chattel mortgages and thereby such mortgage shall be renewed, continue and be valid and of full force and effect upon the goods, chattels or personal property described therein for the time stated in such affidavit, not to exceed one year.

Filing affidavit does not extend time for payment.

SEC. 1543. That the filing of the affidavit provided in section 1542 of this act shall not be construed to extend the time of maturity of any debt or the execution of any obligation secured by such mortgage, but the same may be enforced according to the conditions thereof, and such mortgage foreclosed according to law at any time within the period to which such mortgage is so renewed, unless agreement be made between the mortgagee and mortgagor extending the time of payment of such debt or fulfillment of such obligation to the time stated in such affidavit.

Rights of subsequent mortgagee

SEC. 1544. Any subsequent mortgagee of goods, chattels or personal property, upon which a prior mortgage exists, which has been extended or renewed as provided in section 1541 of this act may, at any time during the existence of such mortgage, pay the amount of the debt and interest owing and secured thereby as shown by such affidavit and mortgage, or deposit the full amount thereof with the county clerk and recorder of deeds of the county wherein such affidavit and mortgage are filed, subject to the order of the mortgagee, his legal representatives or assigns, and the receipt or duplicate receipt for such payment or deposit shall be filed in said office and attached to such mortgage and thereby such subsequent mortgagee shall be subrogated to all the rights of the prior mortgagee under such mortgage.

Fee of recorder.

SEC. 1545. That a fee of fifty cents shall be paid to the county clerk and recorder of deeds for filing each affidavit of renewal, or receipt for payment or deposit mentioned in this act.

NOTE.—Sections 1541 to 1545, both inclusive, are respectively sections 1 to 5, both inclusive, of "An act concerning chattel mortgages," approved March 5, 1887, and comprise all of said act, except section 6 thereof, which is as follows: "Section 6. That section 1 of an act entitled 'An act to amend an act entitled "An act concerning chattel mortgages," approved February 19, 1881,' approved February 27, 1885, and section 4 of an act entitled 'An act concerning chattel mortgages,' approved February 19, 1881, be and the same are hereby repealed."

SEC. 1546. Personal property mortgaged may be taken on attachment or execution issued at the suit of a creditor of the mortgagor; but before the property is so taken the officer must pay or tender to the mortgagee the amount of the mortgage debt and interest, or must deposit the amount thereof with the county treasurer of the county in which the mortgage is filed, payable to the order of the mortgagee; and when the property then taken is sold under process, the officer must apply the proceeds of the sale as follows:

14th ses. p. 54. How mortgaged property taken on attachment or execution.

First. To the repayment of the sum paid to the mortgagee, with interest from the date of such payment; and

Second. The balance, if any, in like manner as the proceeds of sales under execution are applied in other cases.

NOTE —Section 1546 act of February 27, 1885

SEC. 1547. For his services as provided in section 1540 of this chapter, the recorder shall be entitled to receive the sum of one dollar for each mortgage of personal property filed in his office.

12th ses. p 4. Fees of recorder.

SEC. 1548. A copy of any mortgage of goods, chattels, or personal property, made, acknowledged, and filed as provided in this chapter, certified by the recorder in whose office the same shall be filed, may be read in evidence in any court of this territory without further proof of the execution of the original, if said original be lost, or out of the power of the person wishing to use it.

Certified copy may be read in evidence

SEC. 1549. The provisions of the foregoing sections of this chapter shall extend to all such bills of sale, deeds of trust, and other conveyances of goods, chattels, or personal property, as shall have the effect of a mortgage or lien upon such property.

12th ses p. 3. To what instruments applicable.

SEC. 1550. An action for the foreclosure of a mortgage of personal property, or the enforcement of any lien thereon, of whatever nature, may be commenced and conducted in the same manner as provided by law for the foreclosure of mortgages and liens upon real property, and the same may be joined in an action for the recovery of the possession of the property mortgaged; but it shall be lawful for the mortgagor of goods, chattels, or personal property, to insert in his mortgage a clause authorizing the sheriff of the county in which such property, or any part thereof, may be, to execute the power of sale therein granted to the mortgagee, his legal representative and assigns, in which case the sheriff of such county, at

Foreclosure.

Sheriff may sell.

the time of such sale, may advertise and sell the mortgaged property in the manner provided in such mortgage; and at any such sale made as aforesaid, the mortgagee, or his representative or assigns, may, in good faith, purchase the property so sold, or any part thereof.

Fees of sheriff.

SEC. 1551. The sheriff making a sale of mortgaged property, as in the foregoing section provided, shall be entitled to receive, as his compensation, the same fees as upon sales of personal property on execution.

Satisfaction.

12th ses. p. 3.

SEC. 1552. Whenever the debt or obligation secured by any mortgage of personal property, which has been filed in the office of the recorder of deeds, as provided in this chapter, shall be paid or discharged, an acknowledgment of satisfaction, signed by the mortgagee, his legal representative, or assigns, must be endorsed upon the mortgage, or copy thereof, filed as aforesaid, and the fact of such discharge and satisfaction noted by the recorder in the book kept by him, as provided in section 1236 of this chapter, opposite the names of the parties to such mortgage.

Penalty for selling mortgaged property without informing purchaser.

SEC. 1553. Any person having conveyed any goods, chattels or personal property to another by mortgage, who shall, during the existence of the lien or title created by such mortgage, sell the said goods, chattels or personal property, or any part thereof, to a third person for a valuable consideration, without informing him of the existence and effect of such mortgage, shall forfeit and pay to the purchaser twice the value of such property so sold, which forfeiture may be recovered in an action of debt in any court having jurisdiction thereof.

Penalty for concealing etc. mortgaged property.

SEC. 1554. Any mortgagor or agent, servant or employe of any mortgagor of personal property, who shall, during the time such mortgage remains in force and virtue, destroy, conceal, sell, or otherwise dispose of the whole or any part of the property mortgaged, or who shall remove the same, or any part thereof, from the county in which such mortgage is filed, without the written consent of the mortgagee, his legal representative or assigns, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than fifty dollars, nor more than five hundred dollars, or by imprisonment in the county jail not less than thirty days, nor more than six months, or by both such fine and imprisonment, at the discretion of the court.

NOTE.—Chapter XCII, except where otherwise specially noted, act of February 19, 1881.

Real and personal mortgages by corporation

SEC. 1555. That all mortgages or deeds of trust of both real and personal property within this territory heretofore or hereafter executed by any incorporated company shall be governed by the law relating to mortgages or deeds of trust of real property, and be recorded in the office of the recorder of every county where any part of said property is situated, and the same shall be valid, notwithstanding the possession of such property is retained by such person or persons, company or corporation; *Provided*, That any mortgage or deed of trust which shall be hereafter executed shall be accompanied by the affidavit specified in section 1 of the act entitled, "An act concerning chattel mortgages," approved February 19, 1881 [section 1538 of the Compiled Statutes of Montana], and which said affidavit may be made on behalf of any such company or corporation by the president, secretary or managing agent thereof.

NOTE —Section 1555 is section 1, and comprises all of "An act concerning mortgages on both real and personal property of any incorporated company," approved March 10, 1887.

CHAPTER XCIII.

NAMES, HOW CHANGED.

Sec. 1556. District courts may change names.
Sec. 1557. Petition for change of name of person. Duty of court.
Sec. 1558. Petition for change of name of city, county, etc.; duty of court.
Sec. 1559. Costs; effect of change.

District court may change names.

SEC. 1556. That the district courts shall have authority to change the names of persons, counties, towns, villages and cities within this territory.

Petition for change of name of person.

SEC. 1557. That any person desiring to change his or her name may file a petition in the district court of the county in which such person may be a resident, setting forth:

First. That the petitioner has been a *bona fide* resident of such county for at least one year prior to the filing of the petition.

Second. The cause for which the change of petitioner's name is sought.

Duty of court.

Third. The name asked for. And it shall be the duty of the district court, at any term thereof after the filing of such petition, upon being duly satisfied by proof in open court of the truth of the allegations set forth in the petition, and there exists proper and reasonable cause for changing the name of such petitioner, and that thirty days previous notice of the intended application had been duly given in some newspaper published in the county, or if there be no newspaper published in the county, then in some newspaper published in the adjoining county, in the same judicial district, to order and direct a change of the name of such petitioner, and that an order for that purpose be made in the register of proceedings of such court.

Petition for change of name of city or county, etc

SEC. 1558. That whenever it may be desirable to change the name of any county, town or village or city, in any county in this territory, a petition for that purpose may in like manner be filed in the district court for such county, signed by a majority of the legal voters of such county, town, village or city, setting forth the cause why such change is desirable, and the name prayed for to be substituted, and the court, upon being satisfied by proof that the prayer of the petitioners is just and reasonable, and that notice, as required in the foregoing section, had been given, and that a majority of the legal voters of such county, town, village or city desire such change, and that there is no other county, town or village or city in the territory of the name prayed for, may order the change prayed for in such petition.

Duty of court.

Costs.

Rights not affected.

SEC. 1559. All proceedings under this act shall be at the cost of the petitioner, for which execution may issue, as in civil cases: *Provided always*, That any change of names under the provisions of this act shall not in any manner affect or alter any right of action, legal process or property.

NOTE.—Sections 1556 to 1559, both inclusive, are respectively sections 1 to 4, both inclusive, and comprise all of "An act to authorize the changing the names of persons and places," approved March 4, 1887.

CHAPTER XCVI.

NOTARIES PUBLIC.

Sec. 1560. *Appointment and term of office.*
Sec. 1561. *Powers of notaries public.*
Sec. 1562. *To keep a record.*
Sec. 1563. *Faith and credit given records.*
Sec. 1564. *Notarial seal.*
Sec. 1565. *May administer oaths, take acknowledgments, etc.*
Sec. 1566. *Duties in case of resignation or removal.*

Sec. 1567. Duties of clerk of districts court concerning records of notaries public.
Sec. 1568. Removal from the county, deemed resignation.
Sec. 1569. When clerk of district court can certify to official character of notary public.
Sec. 1570. Fee of clerk of district court.
Sec. 1571. Notaries previously appointed.
Sec. 1572. Official bond.
Sec. 1573. Misdemeanors in office.
Sec. 1574. Effect of demand of payment by notary and refusal.
Sec. 1575. When signature without seal sufficient.
Sec. 1576. Protest of notary prima facie evidence of facts certified.
Sec. 1577. Power to compel attendance of witnesses.
Sec. 1578. Official oath.

14th ses p 100

How appointed and term.

SEC. 1560. The governor shall appoint one or more persons in each county in the territory notaries public for such county, whose official acts shall be confined to the county in which he is appointed, and whose term of office shall continue for the period of three years from the date of appointment, unless such appointment is sooner revoked by the governor.

NOTE —Section 1560 act of March 12, 1885.

Power and duties.

SEC. 1561. Each notary is invested with the power, and shall perform the duties which pertain to that office by the custom and law of merchants.

To keep record.

SEC. 1562. Every notary public is required to keep a true record of all notices given or sent by him, with the time and manner in which the same were given or sent, and the names of all the parties to whom the same were given or sent, with a copy of the instrument in relation to which the notice is served, and of the notice itself.

Faith given to records.

SEC. 1563. Such records and copies of them, authenticated by the hand and seal of the notary, his protests and all his official acts as notary, and his seal, shall receive such credit and faith as they are entitled to by the law and custom of merchants.

Seal.

SEC. 1564. Each notary public is required to have a seal on which are to be engraved the words "notarial seal" and "Montana," with his surname at length, and at least the initials of his christian name.

May take acknowledgments and administer oaths

SEC. 1565. Notaries public are empowered to administer oaths and to take acknowledgments and proof of deeds, required or permitted by the law of this territory, to be recorded or acknowledged.

Duty upon resignation, etc.

SEC. 1566. It shall be the duty of every notary public, on his resignation or removal from office, and in case of his death, of his legal representative, to forthwith deposit the record, named in section 1562 of this chapter, in the office of the clerk of the district court of the county in which he was resident, and on failure to do so, the person so offending shall be liable to damages to any person injured thereby.

County clerk to keep records

SEC. 1567. It is the duty of each clerk aforesaid, to receive and safely keep all such records and papers of the notary in the case above named, and to give attested copies of them under the seal of his court, for which he may demand such fees as by law may be allowed to the notaries, and such copies shall have the same effect as if certified by the notary.

14th ses. p. 100
Removal taken as resignation

SEC. 1568. If a notary public removes his residence from the county for which he was appointed such removal shall be taken as a resignation.

May file commission with clerk of court.

SEC. 1569. Any notary public appointed under the laws of this territory may file his commission in the office of the clerk of the district court in the county for which he was appointed, or in the county in which he resides, if appointed before the passage of this act, and thereafter the clerk of the court may certify to the official character of such notary public.

Fees of clerk

SEC. 1570. The clerk of the district court shall receive for filing the commission of any notary public the sum of fifty cents, and for each certificate of official character, with seal attached, issued, the further sum of fifty cents.

Notaries heretofore appointed.

SEC. 1571. Any notary public heretofore appointed under the laws of this territory, and whose commission has not expired at the date of the passage of this act, may continue to act in such official capacity throughout the entire territory until the expiration of the time for which he was appointed, with all the power and authority conferred by law on such notary, and as fully as if this act had not been passed.

NOTE —Sections 1568 to 1571 inclusive, act of March 12, 1885

Bond.

SEC. 1572. Every applicant for the commission of notary public shall give bond to the Territory of Montana in the penal sum of one thousand dollars, with two good and sufficient sureties, to be approved by the clerk of the county in which said applicant resides, conditioned for the true and faithful performance of the duties of his office; and upon the filing of such bond in the office of governor of the Territory of Montana, the said governor may issue to said applicant a commission as notary public, for which commission a fee of one dollar shall be paid into the territorial treasury; *Provided*, That when the applicant resides in an unorganized county his bond shall be approved by the clerk of the county to which it is attached for judicial purposes.

NOTE—Act of February 9, 1877

Penalty for acting as notary, when not qualified.

SEC. 1573. Any notary public exercising the duties of his office after the expiration of his commission, or when otherwise disqualified, or appending his official signature to documents when the parties have not appeared before him, shall be guilty of a misdemeanor, and be subject to a fine of one hundred dollars for each offence; to be recovered before any court having competent jurisdiction; and shall also be removed from office by the governor.

Protest

SEC. 1574. That in case of a demand of payment of any promissory note, bill of exchange, or other commercial paper by a notary public, and a refusal by the maker, drawer or accepter, as the case may be, the notary making said demand may inform the indorser, or any party to be charged, if in the same town or township, by notice deposited in the nearest postoffice to the party to be charged, on the day of demand, and no other notice shall be necessary to charge said party.

Signature to jurat sufficient.

SEC. 1575. It shall be sufficient for any duly qualified notary public to certify on oath or affidavit, to be used in this territory, in any of the courts, or in any manner whatever, to append his signature to the jurat, and add thereto the words "notary public", and such subscription shall be sufficient without the impression of his seal, or other or further addition.

Evidence in case of protest

SEC. 1576. The instrument of protest of any notary public appointed and qualified under the laws of this territory, or the laws of any other state or territory in the United States, accompanying any bill of exchange, or promissory note which has been protested by such notary for non-acceptance or non-payment, shall be received in all the courts of this territory as *prima facie* evidence of the facts therein certified, but any party may contradict by other evidence any certificate.

Power to compel attendance of witnesses.

SEC. 1577. In taking depositions he shall have the same power to compel the attendance of witnesses for refusing to testify, which may be vested by law in justices of the peace, and all sheriffs and constables are required to serve and return all processes issued by such notaries, in taking depositions.

13th ses. p. 67.

Oaths.

SEC. 1578. All persons authorized by the laws of the Territory of Montana to administer oaths may administer oaths of office to notaries public.

NOTE 1.—Section 1578 act of February 17, 1883

NOTE 2.—Chapter XCIV., except where otherwise specially noted, act of February 8, 1876.

CHAPTER XCV.

OFFICES AND OFFICERS, TERRITORIAL AND COUNTY.

Sec. 1579. Certain officers prohibited from dealing in territorial script, etc.
Sec. 1580. Prohibited from purchasing or dealing in certain evidences of indebtedness.
Sec. 1581. Treasurers shall refuse to redeem warrants—when.
Sec. 1582. Transfer of individual certificates of indebtedness of officers, legal.
Sec. 1583. Duty of officers to prosecute under the provisions of this chapter.
Sec. 1584. Penalty for violation of provisions of this act.
Sec. 1585. Fines for benefit of school fund.
Sec. 1586. Territorial officers to record bond with secretary.
Sec. 1587. County officer to record bond with county recorder.
Sec. 1588. What officers elected or appointed.
Sec. 1589. How vacancy of county office filled.
Sec. 1590. How vacancy in territorial office filled.
Sec. 1591. Appointed officers to take oath and give bond.
Sec. 1592. Requisites of oath.
Sec. 1593. Superintendent of public instruction; bond.
Sec. 1594. Predecessors of territorial officers to deliver books, etc., to successors.
Sec. 1595. Compensation of territorial officers appointed without consent of council.
Sec. 1596. Governor to nominate certain territorial officers.

Certain officers prohibited from dealing in public securities and demands

SEC. 1579. The territorial treasurer and auditor, and the several district, county, city or town corporation officers in the territory, are hereby expressly prohibited from purchasing or selling, directly or indirectly, or in any manner receiving to their use and benefit, or to the use and benefit of any person or persons whatever, any territory, county, or town, or city warrants, scrip, orders, demands, claim or claims, or other evidence of indebtedness against the territory, or county, or any city or town thereof.

Same

SEC. 1580. The territorial treasurer and auditor, and all county, city, or town corporation officers, are prohibited from purchasing, or being interested in, or receiving, or selling, or transferring, or causing to be purchased, received, sold, or transferred, either in person or by or through the agency, or means of any person or persons whatever, any interest, claim, demand, or other evidence of indebtedness against the territory, or any county, city, or town corporation thereof, either directly or indirectly; nor shall any clerk or employe of any such officer or officers, nor the commissioners employed or to be employed to fund any county, city, or town corporation indebtedness, be allowed to make any purchase, sale, or transfer, or bargain in any manner for any territory, county, city, or town corporation indebtedness; be allowed to make any such purchase, sale, or transfer, or bargain in any way or manner for any territory, county, city, or town corporation warrants, scrip, demands, or other evidences of indebtedness, against the territory, or any county, city, or town corporation thereof.

Not to redeem warrants etc purchased in violation hereof

SEC. 1581. It shall be the duty of the territorial treasurer, and the several county, city, or town corporation treasurers of the territory, to refuse to redeem any warrants against the territory, or any county, city or town corporation thereof, when it shall come to their knowledge that such warrants, scrip or other evidences of indebtedness have been purchased, sold, received or transferred in violation of the provisions of this article.

May sell claim for services.

SEC. 1582. All public officers herein referred to shall have the right to sell or transfer any evidences of public indebtedness which may be issued according to law, and held by such officers for services rendered by them to the territory, county or town corporation legally and justly due.

When settlement shall be withheld.

SEC. 1583. It shall be the duty of any officer charged with the disbursement of any public moneys, or any evidences of public indebtedness, when he shall be informed by affidavit of the violation of any of the provisions of this article by any officer, or any agent or employe of said officer, whose account is to be settled, audited or paid by him, to withhold any settlement or payment of the same and to cause said officer, or any agent or employe of said officer, to be prosecuted for a felony, and, on conviction of any officer or any agent or employe of said officer, guilty of any violation of any of the provisions of this article, he shall be punished by a fine of not less than five hundred dollars, and shall be imprisoned in the territorial prison not less than two months. Such conviction shall operate as forfeiture of office, and the party convicted shall forever be disqualified from holding any office of trust or profit in this territory. Any person giving information which may lead to the conviction of any person under the provisions of this article, shall be entitled to one-fourth of any fine assessed upon and collected from any such officer or agent or employe of said officer. The balance of said fine shall be paid into the county treasury of the several counties.

Penalty.

SEC. 1584. Any officer, or agent or employe of any officer, who shall be guilty of any violation of any of the provisions of this article, shall, on conviction, be punished by a fine of not less than five hundred dollars, and shall be imprisoned in the territorial prison not less than two months. Such conviction shall operate as a forfeiture of office: and it shall be and is hereby made, the duty of all judges in this territory to give this article specially in charge to the grand jurors at each term of their respective courts, and also to all trial juries impanelled for the trial of any of the officers hereinbefore mentioned in this article.

Fines for benefit of schools.

SEC. 1585. That all fines collected under and required by the provisions of this article to be paid into the county treasuries, shall be so paid in for the benefit of the common school fund.

NOTE.—Act of January 12, 1872.

Record and copy of bond of territorial officer.

SEC. 1586. Each territorial officer shall, after the approval of his official bond, and before the same is filed, have such bond recorded in the office of the secretary of the territory, and a certified copy thereof, under the hand and seal of the secretary, shall be evidence in any court of this territory, in case of the loss or destruction of such bond.

Same of county officer.

SEC. 1587. Each county officer shall, after the approval of his official bond and before the same is filed, have such bond recorded in the office of the recorder of deeds of the county for which he shall have been elected, and a certified copy thereof, under the hand and seal of such recorder, shall be evidence in any court of this territory in case of the loss or destruction of such bond.

NOTE.—Act of May 6, 1873.

Territorial officers

SEC. 1588. There shall be elected or appointed in the Territory of Montana, the following officers, to-wit:

First. One delegate to congress.

Second. Members of the council of the legislative assembly.

Third. Members of the house of the legislative assembly.

Fourth. One territorial treasurer.

Fifth. One territorial auditor who shall be *ex-officio* librarian.

Sixth. One superintendent of public instruction.

Seventh. One district attorney for each judicial district.

Vacancy in county office, how filled.

SEC. 1589. Whenever any vacancy shall occur in any county or precinct office, except county commissioners, the county commissioners of the county where such vacancy occurs shall appoint some suitable person to perform the duties thereof, until the next general election.

Vacancy in territorial office, how filled.

SEC. 1590. Whenever a vacancy shall occur at any time in the office of territorial treasurer, auditor, superintendent of public instruction, or district attorney, the governer, by and with the advice and consent of the legislative council, shall appoint some suitable person to perform the duties of such office, and when a vacancy shall occur in the office of county commissioner the probate judge shall appoint some suitable person to perform the duties of such office; such officers, so appointed, shall hold their respective offices until the general election next following such appointment.

Oath and bond.

SEC. 1591. Every person appointed in pursuance of the last two sections of this article shall take the oath and file a bond as prescribed by law, and faithfully perform the duties of their respective offices until their successors are elected and qualified.

Oath.

SEC. 1592. That the territorial auditor, treasurer and superintendent of public instruction, before entering upon the duties of their respective offices, shall be required to take an oath to support the constitution of the United States, the organic act of Montana Territory and to faithfully discharge the duties of their respective offices.

Bond of superintendent of public instruction.

SEC. 1593. That the superintendent of public instruction shall be required to give bond, with two or more sufficient sureties, in the sum of twenty thousand dollars, to be approved of by the secretary of the territory, which bond may be increased from time to time, or new or additional sureties may at any time be required by the secretary or acting secretary of the territory, or by the legislative assembly thereof.

Predecessor shall deliver books, etc.

SEC. 1594. Whenever fhe territorial auditor, treasurer and superintendent of public instruction shall have filed their bond and taken the oath according to law, and shall have received their respective commissions, it shall be the duty and it is hereby required that their predecessors in office shall, without unnecessary delay, deliver over to their successors thus qualified all books, papers, accounts and property belonging to said office, and in case of refusal, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, in any court of competent jurisdiction, be fined in a sum not less than five hundred nor more than two thousand dollars, and be imprisoned in the county jail for the term of six months.

NOTE.—Act of January 12, 1872.

Certain officers to have no salary until confirmed.

SEC. 1595. No territorial officer shall be entitled to have or receive any salary whatever until the legislative council shall have advised and consented to his appointment, if said officer be appointed to fill a vacancy which existed at the close of a session of a legislative council.

NOTE.—Last preceding section is act of February 20, 1879

12th ses. p. 76.

Appointment and term of auditor and treasurer.

SEC. 1596. The governor shall nominate and by and with the consent of the legislative council appoint during the present session of the legislative assembly suitable persons to be territorial treasurer, territorial auditor of public accounts and a superintendent of public instruction, who shall hold their offices for two years and until their successors are duly appointed and qualified. They shall be commissioned by the governor, and take the official oaths, give the official bonds and perform the duties of their respective offices as now required by law.

NOTE.—Section 1596 act of February 23, 1881

OLEOMARGARINE.

[*See Chapter X, Fourth Division.*]

CHAPTER XCVI.

PARTNERSHIP.

Sec. 1597. Limited partnerships—how formed.
Sec, 1598. Of whom said partnership may consist.
Sec. 1599. Certificate—what to contain.
Sec. 1600. How certificate to be signed and acknowledged.
Sec. 1601. New certificate upon renewal of partnership.
Sec. 1602. Business conducted in name of general partners.
Sec. 1603. Capital stock not to be withdrawn; liability of special partners.
Sec. 2604. Assignment for benefit of creditors—what to provide.
Sec. 2905. When assent of creditors presumed; publication of notice of assignment.
Sec. 1606. When suit to be brought by or against general partners.
Sec. 1607. Record of notice of dissolution of partnership.
Sec. 1608. Limited partners liable generally, except as herein provided.

Limited partnership, how formed.

SEC. 1597. Limited partnership, for the transaction of mercantile, mechanical, mining or manufacturing business, within this territory, may be formed by two or more persons, upon the terms and subject to the conditions and liabilities prescribed in this chapter; but nothing contained in this act shall authorize such partnership for the purpose of banking or insurance.

Number and liability of partners.

SEC. 1598. The said partnership shall consist of two or more persons, who shall be called general partners, who shall jointly and severally be responsible, as general partners are by law, and two or more persons who shall contribute to the common stock a specific sum in actual cash payment as capital, who shall be called special partners, and who shall not personally be liable for any debt of the partnership, except in the cases hereinafter mentioned.

Certificate.

SEC. 1599. The persons forming such partnership shall make and severally sign a certificate which shall contain the name of the firm under which such partnership is to be conducted, the name and respective places of residence of all the general and special partners, the amount of capital which each special partner has contributed to the capital stock, the general nature of the business to be transacted and the time when the partnership is to commence and when it is to terminate.

Certificate to be acknowledged and recorded.

Sec. 1600. No such partnership shall be deemed to have been formed until a certificate, made as aforesaid, shall be acknowledged by all the parties before some officer authorized to take acknowledgments of deeds, and recorded in the office of the recorder of the county in which the principal place of business of the partnership is located, in a book to be kept for that purpose, open to public inspection. If any false statement shall be made in any such certificate, all the persons interested in the partnership shall be liable as general partners for all the engagements thereof.

Renewal.

Sec. 1601. Upon every renewal of a limited partnership beyond the time originally agreed upon for its duration, a certificate shall be made, as provided for in the original formation of partnership; if not renewed, it shall be deemed a general partnership.

Firm name.

Sec. 1602. The business of the partnership shall be conducted under a firm, in which names of the general partners only shall be inserted. The name of any special partner shall be used in said firm with his consent, or if he shall personally make any contract respecting or concerning the partnership with any person except the general partner.

Capital stock.

Sec. 1603. During the continuance of any partnership under the provisions of this chapter no part of the capital stock thereof shall be withdrawn, nor any division of interests be made, so as to reduce such capital stock below the sum stated in the certificate before mentioned. If, at any time during the continuation or at the termination of the partnership, the property assets shall not be sufficient to pay the partnership debts, the special partners shall severally be held responsible for all sums by them in any way received, withdrawn or divided with interest thereon from the time when they were so withdrawn respectively.

Assignment.

Sec. 1604. No general assignment by said partnership, in case of insolvency, or where their goods and estate are insufficient for the payment of all their debts, shall be valid, unless it provide for a distribution of the partnership property among all the creditors, in proportion to the amount of their several claims.

Same.

Sec. 1605. In all cases of such assignment as provided in the preceding section, the assent of the creditors shall be presented, unless within sixty days after notice thereof any shall dissent; and no such assignment shall be valid unless notice thereof shall be given in some newspaper, printed in the county where the place of business of the party making it is situated, or, if no newspaper be printed in such county, then in some newspaper in the territory nearest thereto, within twenty days after making such assignment.

Suits.

SEC. 1606. All suits respecting the business of such partnership shall be prosecuted by and against the general partnership, except in those cases in which provisions are made in this chapter that the special partners shall be deemed general partners, and that special partnership shall be deemed general partnership, in which cases all the partners deemed general partners may join or be joined in such suit, and excepting also those cases where special partners shall be held severally responsible on account of any sum by them received or withdrawn from the common stock, as before provided.

Dissolution.

SEC. 1607. No dissolution of a limited partnership shall take place, except by operation of law, before the time specified in the certificate before mentioned, unless a notice of such dissolution shall be recorded in the recorder's office in which the original certificate of renewal of the partnership was recorded; and unless such notice shall also be published for three successive weeks in some newspaper printed in the county where the certificate of the foundation of such partnership was published according to the provisions of this chapter; and if no newspaper shall, at the time of such dissolution, be printed in the county, then the notice of such dissolution shall be published in some newspaper published in the territory nearest thereto.

Members subject to rights of general partners.

SEC. 1608. In all cases not otherwise provided for in this chapter, the members of limited partnership shall be subject to all the rights of general partners.

NOTE—Act of January 12, 1872

CHAPTER XCVII.

POOR.

Sec. 1609. County commissioners vested with entire control.

Sec. 1610. Relations to care for poor; penalty for neglect.

Sec. 1611. Order in which relations liable.

Sec. 1612. When pauper may receive relief from the county.

Sec. 1613. *Order to publish notice for proposals to care for the poor.*

Sec. 1614. *Bids to be received annually and contract to be let to lowest responsible bidder.*

Sec. 1615. *Contract for medicines and medical attendance.*

Sec. 1616. *Bond of contractor: Duty of physician to examine paupers and notify contractor.*

Sec. 1617. *Minor pauper to be apprenticed and educated.*

Sec, 1618. *Persons not paupers falling sick to be cared for.*

Sec. 1619. *Application of persons seeking relief.*

Sec. 1620. *Paupers belonging to another county to be removed: Notice for pauper to leave.*

Sec. 1621. *After notice, pauper not entitled to relief.*

Sec. 1622. *Poor farm and work-house.*

Sec. 1623. *Surplus moneys in poor fund.*

Sec. 1624. *Penalty if county commissioners neglect duty.*

Sec. 1625. *Commissioners may reject any and all bids of parties offering to contract.*

Power of commissioners

SEC. 1609. That the board of county commissioners of the several counties of this territory are hereby vested with entire and exclusive superintendence of the poor in their respective counties.

Who liable for support of infirm poor.

SEC. 1610. Every poor person who shall be unable to earn a livelihood in consequence of bodily infirmities, idiocy, lunacy or other cause, shall be supported by the father, grandfather, mother, grandmother, children, grandchildren, brothers or sisters of such poor person, if they, or either of them, be of sufficient ability; and every person who shall fail or refuse to support his or her father, grandfather, mother, grandmother, child, sister or brother, when directed by the board of county commissioners of the county where such poor person shall be found, whether such relation reside in the county or not, shall forfeit and pay to the county for the use of the poor of their county, the sum of thirty dollars per month, to be recovered in the name of the county commissioners for the use of the poor aforesaid, before any justice of the peace, or any court having jurisdiction: *Provided*, That when any person becomes a pauper from intemperance or other bad conduct, he shall not be entitled to any support except parent or child.

SEC. 1611. The children shall be first called on to support their parents, if there be children of sufficient ability; if there be none the parents of such poor person shall be next called on; and if there be no parents or children of sufficient ability the brothers and sisters shall next be called on; and if there be no brothers and sisters, the grandchildren of such poor person shall be called on, and then the grandparents, but married females, while their husbands live, shall not be liable to a suit.

Who may be called upon to support infirm poor.

SEC. 1612. When any poor person or persons shall not have relations in any county in this territory, as are named in the preceding sections, or such relations shall not be able, financially, or shall fail or refuse to maintain such pauper, then the said pauper shall receive such relief as the case may require, out of the county treasury as is hereinafter provided.

When county liable.

SEC. 1613. The county commissioners of their respective counties shall, at their regular session in September of each year, make an order directing the clerk of the board to publish a notice in a newspaper, inviting sealed proposals for the care, support and maintenance of the sick, poor and infirm of the county, per capita, by the week, for the succeeding year; said proposals to include and cover the entire cost of feeding, clothing and nursing of the said sick, poor and infirm, and all burial expenses thereof; said notice to be inserted in said newspaper immediately after the order is made, and continue for four consecutive weeks.

Proposals for care of poor.

SEC. 1614. Said proposals shall be addressed to the clerk of the board of county commissioners, and the said commissioners shall, at their December term, in the year A. D. 1876, and annually thereafter, open and carefully compare said bids, or proposals, and shall award the contract for the care, support and maintenance of the sick, poor and infirm of the county, by the week, per capita, to the lowest responsible bidder for the ensuing year.

Contract shall be awarded to lowest responsible bidder

SEC. 1615. The boards of county commissioners of the several counties shall annually, at their December meeting, make a contract with some resident practicing physician to furnish medical attendance to the said sick, poor and infirm of their respective counties, and to the inmates of the county jail who may require medical treatment for the succeding year, and shall also make provision for furnishing such medicines as

Medical treatment.

Bond of contractor.

may be required for such poor, sick and infirm, and the inmates of the county jail who may require medicines.

NOTE.—Section 1615 act of March 10 1885.

SEC. 1616. The person or persons to whom said contracts shall be awarded as provided for in sections 1614 and 1615 of this chapter shall, before entering upon their duties as such contractors, execute a bond running to the people of the territory of Montana, in a sum not less than one thousand, nor more than five thousand, dolllars, with two or more sureties, condiditioned for the faithful performance of their respective contracts; said bond to be approved by and filed with the probate judge of the county. It shall be the duty of the physician to whom such contract shall be awarded, in whole or in part, as provided in section 1615, of this chapter, to examine each week all persons who are or may become a charge upon the county, and, if after such examination he shall be satisfied that the physical condition of such person or persons is such as to enable such person to support and maintain himself or herself, he shall so notify the contractor or contractors having such person or persons in charge, as provided for in section 1614 of this chapter, by leaving with such contractor or contractors a notice, and file a duplicate thereof with the clerk of the board of commissioners, which notice shall be in substance as follows, to-wit: "A. B.—You will take notice that C. D. has so far recovered as to require no further care or medical treatment.

Duty of physician.

(Signed) "E. F., Physician."

And after the serving of said notice, and filing the duplicate thereof with the clerk, said person mentioned in said notice shall cease to be a charge upon said county.

SEC. 1617. When any minor under fifteen years of age, or any other person shall become, or be likely to become, chargeable to the county either because of being an orphan, or because the parents or other relatives, as aforesaid, are unable or refuse to support such minor, it shall be the duty of the county commissioners, upon a written application to them made by any person of the county, to bind such minor as an apprentice to some respectable house-holder of the county, by written indenture, which shall bind such minor to serve as an apprentice. And such minor shall be permitted to attend school, if there is one kept in his or her district, for some period of time in each year, to be prescribed in the article of indenture by the said board

Minor may be bound as apprentice.

of county commissioners. And if said commissioners shall fail, neglect, or refuse to so apprentice said minor at their regular session immediately succeeding said application, then said county shall not thereafter be chargeable with the care, support, and maintenance of such minor person or persons.

Expenses of sickness and burial of pauper to be paid by county.

SEC. 1618. When any non-resident not coming within the definition of a pauper shall fall sick in any county in this territory, not having money or property to pay his board, nursing, or medical attendance, it shall be the duty of the commissioners of the proper county, on application being made to give, or order to be given, such assistance to such person as they may deem just and necessary; and if such sick person shall die then the said commissioners shall order to be given to such person decent burial; and the said commissioners shall make such allowance for board, nursing, and medical attendance, or burial expenses, as they may deem just and equitable, and order the same to be out of the county treasury.

Application for relief.

SEC. 1619. All persons seeking relief under the provisions of this chapter, shall make application to the chairman of the board of county commissioners, or to the probate judge of said county, who, before granting an order for such relief, shall require of said pauper satisfactory evidence that he or she has been a resident of the county for two months immediately preceding the day upon which said application is made.

As to pauper from another county.

SEC. 1620. When application is made by any pauper to the board of county commissioners as aforesaid, [if] it shall appear to the satisfaction of said board that the person so applying for relief has resided in said county for two months, he shall be entitled to all the relief provided by this chapter; but if on examination it shall appear that said pauper is a resident of some other county of this territory, the commissioners shall, at the expense of the county, cause said pauper to be removed to the county of which he is a resident, or may, if they think best, issue a notice directed to some constable of the county, which said constable shall serve forthwith on said pauper, requiring him to depart forthwith from the county; and after so serving said notice by reading the same to said pauper, said constable shall, within five days thereafter, return the same to the clerk of the board of county commissioners issuing the same, noting the time and manner of service.

No relief after notice.

SEC. 1621. After service of such notice aforesaid, no pauper shall be entitled to relief from such county, unless the county commissioners deem it absolutely necessary.

Poor farm

SEC. 1622. The board of county commissioners of any county in this territory may, if they think proper, purchase, improve, and keep in repair a tract of land not exceeding one hundred and sixty acres, to be known as a poor farm, and to erect thereon suitable work houses for the use, health and employment of such person or persons as are, or who may become, from time to time, a county charge; and such poor farm, with such work houses as may be erected thereon, together with such pauper as may become a county charge, shall be under such rules and regulations as the county commissioners may deem just and proper; and the county commissioners may, if in their judgment they deem it best, provide for the care, support and maintenance of the sick, poor and infirm of their respective counties upon said poor farm.

Use of surplus.

SEC. 1623. Any surplus that may accumulate in the poor fund of the several counties may be set apart and applied to the purposes of section 1622 of this chapter.

Penalty for violation.

SEC. 1624. Any county commissioner, or commissioners, who shall fail, refuse or neglect to perform any of the duties prescribed by the provisions of this chapter, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars, nor more than five hundred dollars.

NOTE—Preceding sections of this chapter act of February 11, 1876

Bids may be rejected.

SEC. 1625. That nothing contained in sections 1613, 1614, or 1615 of this chapter shall be so construed as to prevent the county commissioners of the several counties of this territory from rejecting any or all bids which they may receive under the provisions of said sections: *Provided*, When any contract shall be let for the maintenance of such sick and poor it shall be let to the lowest responsible bidder.

NOTE.—Last preceding section act of January 26, 1877.

CHAPTER XCVIII.

PRINTING.

Sec. 1626. Governor, president and speaker to contract for territorial printing.

Sec. 1627. Time of contract.

Sec. 1628. Order in which legislative printing to be done.
Sec. 1629. To be printed and delivered within three days.
Sec. 1630. Officers' reports to be printed by contractor.
Sec. 1631. Laws and resolutions to be printed.
Sec. 1632. Penalty should secretary fail in his duty.
Sec. 1633. Distribution of newspapers containing laws.
Sec. 1634. Pay for printing laws.
Sec. 1635. Rates for other printing.
Sec. 1636. Monthly account of printer to be audited and paid.
Sec. 1637. Governor, president and speaker to contract for county printing; rates of.
Sec. 1638. To contract for all public and legal advertisements, etc.
Sec. 1639. Printer's certificate of due publication.
Sec. 1640. Publication in any other paper void.
Sec. 1641. Printer's account for county printing presented and audited quarterly.
Sec. 1642. Bond of contractor.
Sec. 1643. Term folio defined.
Sec. 1644. Upon failure of first contractor; contract to be awarded to another.
Sec. 1645. Printing not herein provided for to be done at same rates.
Sec. 1646. Printing blanks and lithograph work for the governor.
Sec. 1647. Treasurer's report.
Sec. 1648. Publication of treasurer's report.
Sec. 1649. Synopsis of proceedings of commissioners to be published.
Sec. 1650. Annual report to be prepared by county clerk.
Sec. 1651. Publication of annual report.
Sec. 1652. How published when no newspaper published in county.
Sec. 1653. County commissioners to contract for county printing.
Sec. 1654. Penalty for violation.
Sec. 1655. Repeal.
Sec. 1656. Takes effect from passage.

Sec. 1626. That the governor, president of the council and speaker of the house of representatives, or

Governor, president and speaker to contract for territorial printing

a majority of them, are hereby authorized and directed immediately after the passage of this chapter, to contract with such person or persons as they may deem proper in the interest of the territory, for all printing of whatever nature, for the use of the legislative assembly, the auditor's and treasurer's offices of the territory, and the superintendent of public instruction, payment for the printing of which is not provided for by the United States government, the said contract to be made in writing and signed by the contracting parties: *Provided*, That no printing shall be contracted for, under the provisions of this chapter, unless the same is expressly authorized by law.

Term of contract

SEC. 1627. That said contract shall be made and continued in force for the period of two years from the date of its execution.

What printing contractor shall do.

SEC. 1628. That the party contracting to do such printing shall print all bills or other documents ordered by either house of the legislative assembly to be printed, the printing of which is not provided for by the laws of the United States, in the order in which they shall be numbered and delivered to him, and shall return them in like manner, unless otherwise specially ordered.

Within what time bills shall be printed.

SEC. 1629. That all bills, reports and other documents which may be specially ordered printed by either house of the legislative assembly, shall be printed and returned to the house which shall have ordered them within three days after the delivery of the copy of the same to the party contracting to do the printing under the provisions of this chapter, unless, on motion, a longer time be given.

Reports of officers to be printed.

SEC. 1630. That all officers of the several departments of the territory who, by existing or future laws, may be required to make reports to the governor or legislative assembly, at any session thereof, payment for the printing of which is not provided for by the laws of the United States, shall cause the same to be printed by such party contracting to do the printing as aforesaid, for the use of the legislative assembly, and shall present the same to that body within the first week of each session.

Certain laws and resolutions to be printed.

SEC. 1631. That each person contracting to do said printing, shall publish in a newspaper, to be designated in the contract aforesaid, within sixty days after the adjournment of each legislative assembly, such laws and resolutions as the governor, president of the council, and speaker of the house of representatives may designate and direct to be published, and it is hereby made the duty of the secretary of the territory to deliver to such person so contracting to do such printing within twenty days after the adjournment *sine die* of both houses of the legislative assembly, certified copies of such laws as the said governor, president of the council, and speaker of the house may so designate to be published.

Penalty for failure of secretary to perform his duty.

SEC. 1632. That in case the said secretary shall fail to perform the duties prescribed in the preceding section, he shall be deemed guilty of a misdemeanor, and shall pay a fine of fifty dollars for each and every day he shall have failed to perform the duties hereinbefore described; and upon complaint of any citizen of the territory before any court of competent jurisdiction, it is hereby made the duty of the district attorney of the district in which said offence may be committed, to enforce the provisions of this chapter, and collect the fine herein imposed in the same manner as other fines are enforced, and when any fines are collected under the provisions of this chapter the same shall be paid into the school fund of the county in which said fine shall have been collected.

Auditor to be provided with copies of paper.

SEC. 1633. That the said party contracting to do the printing as aforesaid, shall deliver to the auditor of the territory copies of the journal or newspaper containing any of the laws and resolutions of the legislative assembly which shall have been printed as directed by the said governor, president of the council, and speaker of the house of representatives, immediately after the same shall have been published therein; and immediately thereafter the said auditor shall cause copies of the said designated newspaper containing the laws and resolutions as aforesaid, to be sent to the judges, clerks of courts and all territorial, district, county and township officers; and it shall be their duty to preserve all copies of said newspaper so received carefully in their respective offices; that not exceeding one hundred copies of each journal containing such laws shall be paid for at the rates herein prescribed.

Price per one hundred copies of paper

SEC. 1634. That said person or persons contracting to do the printing as aforesaid, shall receive ten dollars for every hundred copies of the newspaper containing the published laws and resolutions as aforesaid, and so deliver to the auditor of the territory, as directed by the preceding section, in addition to the remuneration hereinafter provided. Each copy of the newspaper so furnished shall contain not less than three printed columns of the laws and resolutions as aforesaid.

Rates for printing.

SEC. 1635. That all printing for the territory, or for any department of the territorial government, performed by the party contracting to do the printing as aforesaid, shall be executed on the following terms· For the printing of bills and other matter for the use of and ordered by the legislative assembly, and reports printed in pamphlet form, the rates paid by the United States government, under the laws thereof, and under the rules prescribed by the treasury department of the United States.

For printing the laws and resolutions of the legislative assembly designated as aforesaid, in the newspaper as aforesaid, seventy-five cents for every folio of one hundred words.

The following named blanks shall be printed by the party contracting as aforesaid, at the following rates.

Blank licenses with stubs, bound, eight dollars per thousand copies.

Tax receipts with stubs, bound, seven dollars per thousand copies.

Blanks for statistics, nine dollars per thousand copies.

For publishing all notices and legal advertisments pertaining to the several departments of the territorial government; For every folio of one hundred words, two dollars shall be paid for the first insertion thereof, and fifty cents per folio of one hundred words for each subsequent insertion required by law to be made.

Itemized account

SEC. 1636 That said party contracting to do the territorial printing as aforesaid, shall render once in each month to the territorial auditor an itemized account, under oath, of all the printing and advertising done for the territory or either house of the legislative assembly, or for any officers or department of the territorial government. And the said auditor and the governor shall examine the same, and if they find it to be correct and in accordance with the provisions of this chapter, the auditor shall draw his warrant on the territorial treasurer for the payment of the same.

Contract for printing for counties.

SEC. 1637. That it is also made the duty of the said governor, president of the council and speaker of the house of representatives, in like manner to contract with such person or persons as they may deem proper, in the interest of the several counties in the territory, to do and perform all the printing for which said counties may be chargeable, including legal advertising, blanks and official publications, at the following rates:

For every folio of one hundred words, two dollars shall be paid for the first insertion thereof, and fifty cents per folio of one hundred words for each subsequent insertion required by law to be made.

For rule and figure work, two dollars and fifty cents per folio of one hundred words shall be paid for the first insertion, and one dollar per folio of one hundred words for each subsequent insertion required by law to be made.

That the printed blanks required by law to be printed for the several counties shall be furnished at the following rates:

Notices to taxpayers, seven dollars and fifty cents per thousand copies.

Assessors' blanks, thirty dollars per thousand copies.

Special poor tax receipts with stubs, bound, twenty dollars per thousand copies.

Road tax receipts with stubs, bound, twenty dollars per thousand copies.

County warrants with stubs, bound, thirty dollars per thousand copies.

Same.

SEC. 1638. That the said governor, president of the council and speaker of the house of representatives shall select and contract with a person or persons resident in and publishing a newspaper in each of the counties, to do the printing in said county of which he is a resident; or in case no paper is published in any county, or no publisher in any county will contract under the terms and provisions of this chapter to do the printing of said county, then the governor, president of the council and speaker of the house of representatives, or a majority of them, shall contract with the proprietor of a newspaper having a reasonably large circulation in said county, to do all the printing of every description, for which said county may be chargeable at the rates recited in this chapter, which shall be paid for in warrants upon the contingent fund of said county or counties, and all legal advertisements of whatever character required by law to be published shall be printed and paid for at the rates provided for in section 1637 of this chapter.

Duty of contractor.

SEC. 1639. It shall be the duty of the party contracting to do the printing of any county, upon the payment of the printer's fees, in case of any legal advertisement, to file in the clerk's office of the court having jurisdiction his affidavit, with a copy of said advertisement ordered by said court to be published appended, together with a receipt of the printer's fees, paid by the party at whose instance or for whose benefit such advertisement shall have been made, to be collected as other costs; which affidavit shall state the date of the papers in which said advertisement appeared and the number of times the same was inserted, and be filed and recorded by the clerk as the legal evidence of the publication of the same, and no other evidence of such publication shall be required or allowed.

Term of contract for county.

SEC. 1640. That the contract to do the printing for each of the said counties in the territory aforesaid shall be for the same period prescribed by section 1627 of this chapter. Each person so contracted with shall publish in a newspaper designated by the governor, president of the council and speaker of the house of representatives, all the legal and judicial advertisements of said county, or required to be done in said county, of whatever character; and after such contract as aforesaid and notice thereof to the county commissioners, probate judge, recorder, clerks of courts, and sheriff of said county, every publication or advertisement in any other paper than the one so designated, shall, during the term of such contract, be null and void for any legal purpose.

Quarterly account.

SEC. 1641. That any party who shall have contracted to do the printing in any county in the territory, under the provisions of this chapter, shall, every three months, make out and present to the board of county commissioners of such county an itemized account under oath, of all the printing done in each quarter which is lawfully chargeable against such county. The board of county commissioners shall examine the same, and if they find said account correct, and in accordance with the provisions of this chapter and the contract made thereunder, they shall allow the same and draw their warrant in favor of said contracting party upon the contingent fund of such county.

Bond of contractor.

SEC. 1642. That such person contracting to do the territorial printing shall make and file in the office of the territorial auditor a good and sufficient bond running to the people of the territory of Montana, with two or more securities, to be approved by said auditor, which said bond shall be in the sum of five thousand dollars, and conditioned for the faithful performance of his said contract and the execution of all printing so to be done by him upon good material and in a good and workmanlike manner; and each of said persons receiving contracts to do printing in any of the several counties of this territory, shall in like manner make, execute and file with the county clerk of such county, a good and sufficient bond in the sum of two thousand dollars, with two or more sureties, to be approved by said clerk, with like conditions as in the case of the person contracting to do the territorial printing.

Folio defined

SEC. 1643. The term folio in this chapter shall mean one hundred words, counting each figure as one word. When there are over fifty and under one hundred words, they shall be counted as one folio, but a less number than fifty words shall not be counted as one folio, except when the whole statute, notice, advertisement or order contain less than fifty words.

If newspaper fails, a new contract to be made

SEC. 1644. That if any newspaper that has been designated under the provisions of this chapter, in which territorial or county printing is to be done, shall be destroyed, suspended, or otherwise fail to fulfil any contract made for printing in pursuance of the provisions of this chapter, then, in that case, it shall be the duty of the governor, the president of the council, and the speaker of the house of representatives, or a majority of them, to at once contract with some other publisher for such public printing.

Rates for printing not herein provided for.

SEC. 1645. All other blanks or printing that may be necessary for the territory or any of the several counties of said territory, under existing or any future laws, and not herein provided for, shall be furnished and paid for at the same rates as herein provided for similar blanks, or printing.

NOTE —Act January 21, 1876

13th ses. p. 117

Blanks for governor

SEC. 1646. All blanks necessary to be used by the governor of the territory of Montana, in the performance of any duty required of him by the laws thereof, may be printed at the expense of said territory, under the provisions of chapter 87 of the fifth division of the revised statutes of Montana; and the territorial auditor is hereby authorized to draw his warrants on the territorial treasurer, in favor of the governor, for such sums as may be found by said auditor to be due and payable on account of such expenses: *Provided*, That for lithographing or engraving of such blank commissions as may be required by the governor, such prices may be paid as are required to obtain ordinary litographic work not to exceed the sum of one hundred dollars.

NOTE —Section 1646 act of February 13, 1883.

County treasurer to make report.

SEC. 1647. It shall be the duty of the county treasurer of each county in the territory to make out and present to the board of county commissioners of the respective counties, on the first day of the regular sessions of said boards in March, June, September and December, a detailed statement of the licenses issued by the said treasurer during the quarter preceding such report, which statement shall show the names of the parties to whom licenses have been granted, the business or occupation intended to be carried on, and for which the same was issued, and the amount paid by each person, association, copartnership or corporation therefor; said statement shall also show in detail from personal knowledge, and from the records of his office, the names of parties doing business without a license, the nature of said business and the place where conducted. The commissioners shall also add to said list for publication the names of such other persons as they may know are doing business in the county without a license, and if at the next regular meeting the treasurer has not collected such licenses, or proceeded so to do, as provided by law, or given good reasons why the same have not been collected, the commissioners shall deduct the amounts of such licenses from the salary of said treasurer.

Penalty for failure

Report of treasurer to be published

SEC. 1648. It shall be the duty of the board of county commissioners of each county in the territory, upon the presentation to them of the treasurer's report mentioned in the preceding section, to order the same or a synopsis thereof published one time in the newspaper which has contracted to do the legal advertising of said county: *Provided*, That the price paid for such printing and publishing shall not exceed ten cents for each license so published: *And provided further*, That preference shall be given to one of the papers at the county seat, in the publication of the matter mentioned in this section.

Synopsis of proceedings of commissioners to be published

SEC. 1649. It shall be the duty of the county clerk of each county in the territory, within five days after the adjournment of any meeting of the board of county commissioners, to furnish to the newspaper doing the legal advertising in that county, a synopsis of the proceedings of the meeting of the board, together with a list of bills allowed, and warrants ordered drawn therefor at that meeting, said list to contain the name of the person in whose favor said bill is allowed, the nature of the services, or the materials for which such bill is allowed, and the amount thereof, which synopsis and list of bills shall be published in said newspaper one time: *Provided*, That the price paid for such publishing shall not exceed one cent per word for the synopsis and seven cents for each bill so published: *And provided further*, That preference shall be given to one of the papers published at the county seat in the publication of the matter mentioned in this section.

County clerk to make annual statement.

SEC. 1650. It shall be the duty of the county clerk of each county in the territory to make out and present to the county commissioners of their respective counties at the regular spring term in each year a full and complete statement of the financial condition of their respective counties for the fiscal year preceding March 1st, which statement shall show:

First. The amount of moneys, if any, on hand, as shown by the statement of the previous year.

Second. The amount of moneys received by the treasurer for taxes upon real and personal property.

Third. The amount of moneys received by him for fines, penalties and forfeitures.

Fourth. The amount of moneys received by him for licenses.

Fifth. The amount of moneys received from all other sources.

Sixth. Said statement shall also show the amount of moneys paid out during the last year from the different funds of the counties. The totals of the several amounts of moneys paid out shall be deducted from the sums of moneys on hand at the beginning of the previous year, and moneys received during said year by the county treasurer, and a balance shall be struck.

Seventh. Said statement shall also show the assessed valuation of all real and personal property for that year, the rate of taxation, the assessed valuation of real and personal property on which taxes have not been paid, the total delinquent taxes for that year and for each preceding year.

Statement to be filed and published.

SEC. 1651. The facts thus ascertained and the statement thus made out, shall be made out in duplicate, one copy of which shall be filed in the office of the county treasurer, and one copy sent to the territorial auditor. Said statement shall also be recorded in full in the journal of the proceedings of the board of county commissioners, and shall be published for one week in the newspaper which has contracted to do the public printing in said county, said publishing to be done at not to exceed contract rates.

If no newspaper, statement to be posted.

SEC. 1652. If there is no paper published in the county, or if the papers published therein refuse for any reason to publish the statements and lists provided for in preceding sections of this act, the board of county commissioners may, in its discretion, have said statements and lists published in some paper in an adjoining county, at rates not exceeding the rates specified in the preceding sections, or may direct the county clerk to prepare and post copies of such statements and lists in three public places in the county.

Commissioners shall contract for county printing Rates to be paid therefor.

SEC. 1653. That it is hereby made the duty of the county commissioners of the several counties in the Territory of Montana, to contract with some newspaper of general circulation published within the county, to do and perform all the printing for which said counties may be chargeable, including all legal advertising required by law to be made: blanks, blank books and official publications, at not exceeding the following prices: For every folio of one hundred words or fraction thereof, not exceeding one dollar and fifty cents shall be paid for the first insertion thereof, and fifty cents per folio of one hundred words for each subsequent insertion required by law to be made, and three figures or fraction thereof shall count as one word. For rule and figure work not exceeding two dollars per folio of one hundred words or fraction thereof, and fifty cents per folio of one hundred words for each subsequent insertion thereof required by law to be made. Printed blanks required by law to be printed for the several counties, shall be furnished at the following rates: For blanks cut from flatcap paper, measuring fourteen by seventeen inches in size and weighing not less than sixteen pounds to the ream as follows: For eighth sheets printed on one side, $3.00 for the first hundred copies and thirty cents for each subsequent hundred copies, and twenty cents additional per hundred if bound. For eighth sheets printed on both sides, $4.50 for the first hundred copies and fifty cents for each subsequent hundred copies. For quarter sheets printed on one side $4.00 for the first hundred copies and thirty-five cents additional per hundred if bound. For quarter sheets printed on both sides $6.00 for the first hundred copies and sixty cents for each subsequent hundred copies. For half sheets printed on one side $7.50 for the first hundred copies, and seventy cents for each subsequent hundred copies, and fifty cents for each additional hundred if bound. For half sheets printed on both sides $12.00 for the first hundred copies and eighty cents for each subsequent hundred copies. For whole sheets printed on one side, $11 for the first hundred copies, and $1 for each subsequent hundred copies, and sixty cents additional per hundred if bound. For whole sheets printed on both sides, $18 for the first hundred copies and $1.25 for each subsequent hundred copies. When any number of blanks enumerated in the above schedule exceeding one thousand shall be ordered, the price shall be *pro rata* of the average price of the first thousand; county warrants with stubs printed on bond paper, twenty-five dollars per thousand; road tax receipts, special poor tax receipts, or other blanks that are required to be numbered and perforated, three dollars per thousand extra; for blank books:

Medium, 13x18 inches, $3 per quire.
Double cap, 14x17 inches, $3 per quire.
Demy, 10x16 inches, $2.50 per quire.
Cap, 8x14 inches, $2 per quire.

The above prices are for books of six or more quires, eighty pages to the quire; for books of less than six quires not more than 15 per cent. shall be added to the above prices; books with printed headings, $1.50 per quire additional for each and every form; 15 per cent additional for books of less than six quires. All other blanks, books or printing not herein provided for shall be furnished and paid for at not to exceed the rates herein provided for similar blanks or printing.

Penalty for violation.

SEC. 1654. Any county commissioner, county clerk or county treasurer, who shall neglect or fail to comply with the provisions of this act without just cause, shall, upon conviction, be fined not less than one hundred dollars nor more than five hundred dollars, and such conviction shall work forfeiture of office.

Sections repealed

SEC. 1655. Sections 363, 374 and 375, of the fifth division of the revised statutes of Montana, and all other acts or parts of acts in conflict with the provisions of this act be and the same are hereby repealed.

Takes effect from passage

SEC. 1656. This act shall take effect from and after its passage.

NOTE.—Sections 1647 to 1656, both inclusive, are in their order respectively sections 1 to 10, both inclusive, and comprise all of "An Act requiring the publication of certain matters," approved March 10, 1887.

CHAPTER XCIX.

REAL ESTATE.

Sec. 1657. Rights of parties occupying the public domain.

Sec. 1658. Declaration or deed to be recorded, etc.
Sec. 1659. Tranferable interest of owner of claim.
Sec. 1660. Rights of occupancy and possession determined by the local law
Sec. 1661. Form of declaration.
Sec. 1662. Muniment of title to be recorded.
Sec. 1663. Records to be received as evidence; except when.
Sec. 1664. Declaration not to include mines.

Possessory rights on public domain.

Sec. 1657. Conceding to the United States of America the primary and paramount right to dispose of the soil of this territory according to the laws existing or to be enacted by congress, and full and complete exemption from every form of taxation of their property, it is hereby declared that as between all citizens now residing in or who shall hereafter come to reside in this territory, and as between them, or any of them, and others having or claiming now, or hereafter pretending to have or claim, any right to occupy, possess or enjoy any portion of the public domain, situate within the boundaries of this territory, and as between each and every one of them, and all other persons, associations, corporations and powers, except the government of the United States of America, the right as the same may exist under the local laws to occupy, possess and enjoy any tract or portion thereof, not to exceed one hundred and sixty acres, in such form as may be prescribed by the laws of the United States, shall be respected in law and in equity in all the courts and tribunals of this territory, as a chattel real, possessing the character of real estate.

Declaration

Sec. 1658. All rights of occupancy, possession and enjoyment of any tract or portion of the said public domain, except mining claims, shall be expressed and described in a declaration in cases of original occupation, and by deed in cases of purchase, duly acknowledged by some officer authorized to take acknowledgments of deeds, and recorded in the office of the recorder of the county in which the land is situated.

Right transferable.

Sec. 1659. The owner of every claim or improvement on any tract or parcel of land, has transferable interest therein, which may be sold by execution or otherwise, and any sale of such improvement is a sufficient consideration to sustain a promise.

Local law to govern.

SEC. 1660. All rights of occupancy, possession, and enjoyment of any tract or portion of the said public domain acquired before the passage of this chapter, shall be ascertained, adjudged, and determined by the local law of the district or precinct in which such tract is situated, as it existed on the day when such rights were acquired, or as it thereafter may have existed, then by the common custom then prevailing, in respect to such property, in the district or precinct in which it existed.

Form of declaration.

SEC. 1661. The declaration of an occupant of a tract or portion of the public domain, required by section 1658 of this chapter, shall be substantially in the following form.

To all whom these presents may concern: Know ye, that I, A. B., of......., in the county of......., in the territory of Montana, do hereby declare and publish as a legal notice to all the world, that I have a valid right to the occupation, possession, and enjoyment of all and singular that tract or parcel of land not exceeding one hundred and sixty acres, situate, lying and being in the township of ...., in the county of ...., in the Territory of Montana, bounded and described as follows; [here insert the description;] together with all and singular the hereditaments and appurtenance thereunto belonging, or in anywise appertaining.

Witness my hand and seal, this .... day of ...., one thousand eight hundred and sixty....

To be subscribed with the full Christian name and surname of the person making the application, acknowledged in the same manner as a deed of real estate.

Deeds, etc., to be recorded.

SEC. 1662. All persons, associations, and companies, now claiming individually and collectively, the right to the occupancy, possession and enjoyment of any tract or parcel of the said public domain, except mining claims, under or by virtue of the terms expressed in section 1660 of this chapter, shall deposit all deeds, declarations and other muniments of title, for record, with the recorder of the county in which the lands shall be situated, within three months from the time a duly elected recorder shall enter upon his duties, unless within that time the books of record in which they may have been recorded according to the local law or custom shall have been deposited in said office for the public use.

SEC. 1663. In all legal or equitable proceedings hereafter instituted in any court in this territory, the

Title good except as against United States.

record of any declaration, deed, or mortgage, or any other muniments of right referred to in sections 1659 and 1661 of this chapter, shall be received except as against the United States, and all other persons claiming under the United States, as presumptive evidence of the regularity of the paper itself, under the local law or custom existing at the true time of its execution, and if the regularity thereof shall be challenged, the burden of proving the alleged irregularity shall be upon the party making the challenge.

Mines excepted.

SEC. 1664. The declaration of every occupant of any tract or portion of the public domain mentioned in section 1661 of this chapter, shall not be construed to include any gold-bearing quartz lodes, silver lodes, or gold diggings, but said lodes or diggings shall be excepted from the tract of said occupant, and shall be subject to be occupied, possessed, and enjoyed, according to the local laws or customs of the district in which the same may be situated, and if there shall be no local law or custom in said district, then by the custom prevailing in the nearest mining district thereto.

NOTE.—Act January 12, 1872.

CHAPTER C.

REVENUE.

Sec. 1665. Taxes; for what purpose levied.
Sec. 1666. Meaning of terms.
Sec. 1667. What property to be taxed.
Sec. 1668. Exemptions.
Sec. 1669. Tax; how levied or voted.
Sec. 1670. Rate of taxation.
Sec. 1671. In whose name property listed.
Sec. 1672. Who deemed owners.
Sec. 1673. Assessment at cash value.
Sec. 1674. Assessment of stock.
Sec. 1675. Assessment of railroad property.
Sec. 1676. Insurance companies.
Sec. 1677. Mines.
Sec. 1678. Deductions from credits.
Sec. 1679. Agents duty as to listing property.
Sec. 1680. Stocks and stockholders.
Sec. 1681. Same.
Sec. 1682. Same.
Sec. 1683. Blanks to left with or mailed to owner.
Sec. 1684. Assessment books etc.; description of property.

Sec. 1685. Owner to deliver property list.
Sec. 1686. What list shall contain.
Sec. 1687. Form of oath.
Sec. 1688. If owner fails to make list, assessor shall make same.
Sec. 1689. Penalty for concealing, etc., property.
Sec. 1690. Penalty for failure of duty by assessor.
Sec. 1691. Duty of person having no property.
Sec. 1692. Statements to be preserved.
Sec. 1693. Assessment book to be delivered to clerk.
Sec. 1694. School district to be numbered.
Sec. 1695. Additional assessments.
Sec. 1696. Lots to be separately assessed.
Sec. 1697. Oath of assessor.
Sec. 1698. Equalization.
Sec. 1699. Notice of meeting for equalization.
Sec. 1700. Duplicate abstracts of assessments.
Sec. 1701. Penalty for failure of clerk to perform duty.
Sec. 1702. Territorial board of equalization and their powers.
Sec. 1703. Transcript of proceedings to be sent to county clerks.
Sec. 1704. Tax list.
Sec. 1705. Tax list to be placed in hands of treasurer.
Sec. 1706. Collection of taxes.
Sec. 1707. How collection enforced if owner removes.
Sec. 1708. Treasurer to collect all taxes.
Sec. 1709. Correction of errors in names; notices.
Sec. 1710. Receipt for taxes.
Sec. 1711. Payment to be noted.
Sec. 1712. Distraint for taxes.
Sec. 1713. Lien upon personal property for taxes.
Sec. 1714. Lien upon real estate.
Sec. 1715. Expenses not to be paid by territory.
Sec. 1716. One-fourth of taxes may be paid in warrants.
Sec. 1717. Endorsement upon warrant.
Sec. 1718. Time for paying taxes not to be extended.
Sec. 1719. Proceedings in case of distraint.
Sec. 1720. Duty of corporation.
Sec. 1721. Penalty for violation by corporation.
Sec. 1722. Treasurer to have aid if resisted.
Sec. 1723. When tax becomes delinquent.
Sec. 1724. Omission of property erroneously taxed.
Sec. 1725. When property subject to sale.

Sec. 1726. List of property to be sold.
Sec. 1727. Notice of sale.
Sec. 1728. Affidavit of printer.
Sec. 1729. Affidavit of treasurer.
Sec. 1730. Penalty of ten per cent. for advertising.
Sec. 1731. Jurisdiction of treasurer for purposes of sale.
Sec. 1732. Tax sale.
Sec. 1733. Return of sale.
Sec. 1734. Manner of conducting sale.
Sec. 1735. Payment of purchase price.
Sec. 1736. Sale not to be affected by mistake in name.
Sec. 1737. What abbreviations may be used.
Sec. 1738. Construction as to abbreviations.
Sec. 1739. Treasurer's record of sales.
Sec. 1740. Manner of conducting sale.
Sec. 1741. Same.
Sec. 1742. Errors may be corrected.
Sec. 1743. Certificate of purchase.
Sec. 1744. Certificate may be assigned.
Sec. 1745. Payment of subsequent taxes.
Sec. 1746. Treasurer's deed.
Sec. 1747. Form of deed.
Sec. 1748. Effect of deed.
Sec. 1749. Name of grantee to be entered.
Sec. 1750. Limitation of action for recovery in case of tax sale.
Sec. 1751. Redemption.
Sec. 1752. Redemption by minor, etc.
Sec. 1753. Manner of making redemption.
Sec. 1754. Quit claim.
Sec. 1755. Order for redemption money.
Sec. 1756. Bond in case of lost certificate.
Sec. 1757. Redemption of undivided interest.
Sec. 1758. Certificate of redemption.
Sec. 1759. Clerk to make entry of redemption.
Sec. 1760. Fee of clerk.
Sec. 1761. Who may become purchaser.
Sec. 1762. Proceedings in case of judgment declaring sale void.
Sec. 1763. Recovery of tax paid by tenant, etc.
Sec. 1764. Lienholder may pay tax.
Sec. 1765. Duty of clerk in case of transfer.
Sec. 1766. Advertising delinquent tax list.
Sec. 1767. Printer liable for error.
Sec. 1768. Duty of clerk in case of false assessment.

Sec. 1769. Unpaid taxes to be added to assessment.
Sec. 1770. Penalty for violation.
Sec. 1771. Evidence.
Sec. 1772. Who may administer oath.
Sec. 1773. Duty of clerk as to property sold.
Sec. 1774. Auditor to prescribe forms.
Sec. 1775. Responsibility of county for territorial tax.
Sec. 1776. Settlements with treasurer.
Sec. 1777. Taxes; to what use deemed appropriated.
Sec. 1778. Cash book to be kept by treasurer.
Sec. 1779. Duplicate receipts.
Sec. 1780. Entries in cash book.
Sec. 1781. Railroad corporations to furnish lists of lands.
Sec. 1782. Lists of lands to be procured from land office.
Sec. 1783. How treasurer to be charged and credited.
Sec. 1784. Additional assessments.
Sec. 1785. Taxes due, etc., to be paid over.
Sec. 1786. Duty of retiring treasurer.
Sec. 1787. Special poor tax.
Sec. 1788. Preparation of records.
Sec. 1789. Laws repealed.
Sec. 1790. Special poor tax.
Sec. 1791. Miner to furnish a statement of gross receipts and expenditures.
Sec. 1792. What expenditures may be included in statement.
Sec. 1793. Net proceeds of mines to be taxed.
Sec. 1794. Penalty for failure to furnish statement.
Sec. 1795. Mining claim to be taxed at government price.

For what purpose taxes levied.

SEC. 1665. That for the support of the government of the territory, the payment of public debt and the advancement of public interest property shall be assessed and taxes levied thereon as hereinafter provided.

Meaning of terms.

SEC. 1666. Whenever the terms mentioned in this section are employed in this act, they are employed in the sense hereinafter affixed to them.

First. The term "real estate" includes all lands within the territory, to which title, or the right to title, has been acquired from the government of the United

Real estate.

States, and second improvements; *Provided*, That all improvements made by persons upon lands held by them under the laws of the United States, the fee of which lands is still in the United States, and all such improvements upon lands, the title to which is still vested in any railroad company, or any other corporation whose property is not subject to the same mode and rule of taxation, shall be assessed and taxed as personal property.

Improvements.

Second. Improvements. The term "improvements" includes all buildings, structures and fixtures erected upon or affixed to land, whether title has been acquired to said land or not.

Personal property.

Third. The term "personal property" includes everything which is the subject of ownership not included within the term real estate.

Full cash value.

Fourth. The term "full cash value" means the amount at which the property would be appraised if taken in payment of a just debt from a solvent debtor.

Credit.

Fifth. The term "credit" includes every claim and demand for money, labor or other valuable thing, and every annuity or sum of money receivable at stated periods; but pensions from the United States and salaries and payments expected for services to be rendered, are not included in the above term.

Money or moneys.

Sixth. The term "money or moneys" includes all gold and silver coin, treasury notes, bank notes and every deposit which any person owning the same or holding in trust and residing in this territory is entitled to withdraw in money on demand.

What property to be taxed.

SEC. 1667. All property, both real and personal, within the territory, not expressly exempt by law, shall be subject to taxation.

Property exempt from taxation.

SEC. 1668. The following classes of property shall be exempt from taxation:

First. Mines, except on the net proceeds thereof, and mining claims, except those held under a patent from the United States, the surface of which shall be taxed as other real estate, *Provided*, That all machinery used in mining claims, and all property and improvements appurtenant or upon mining claims, which have a separate and independent value, shall be subject to taxes.

Second. Ditches, canals, flumes, owned and used by individuals or corporations for irrigating lands owned by such individuals or corporations, or the individual members thereof, shall not be separately taxed so long as they shall be owned and used exclusively for such purpose.

Third. The property, real and personal, of the United States, of the territory and of counties, cities, towns, schools and other municipal corporations.

Fourth. All public libraries, grounds and lots, the buildings thereon of literary, scientific, benevolent, agricultural and religious societies and institutions, devoted solely to the appropriate objects of these institutions; also cemeteries, not used or held for private or corporate profit. *Provided,* That all deeds or other conveyances by which such property is held shall be duly filed for record before the property therein described shall be omitted from the assessment.

Fifth. The property of widows or orphan children, not to exceed the amount of one thousand dollars to any one family.

Sixth. Growing crops.

Seventh. Tools of mechanics, farming tools of husbandmen, libraries of professional men and private citizens, household furniture of families or householders, which do not exceed in value the sum of two hundred and fifty dollars.

Eighth. Such property of any railroad company as may be exempted from taxation by any law of the United States.

Ninth. The property of Indians who are not citizens, except land held by them by purchase.

Tenth. All live stock under the age of six months.

Taxes; how levied or voted

SEC. 1669. All taxes shall be levied or voted in specific amounts, and the rates per ceuntum shall be determined from the amount of property, as equalized by the territorial board of equalization, each year, except such general or special taxes as may be definitely fixed by law. The territorial tax shall be levied by the territorial board of equalization, not exceeding the rate prescribed by law, and the rate of such tax, together with the rates of all other district or territorial taxes, as fixed by the legislative assembly, shall be certified by the territorial auditor to each county clerk on or before the first Monday of September, annually. The county taxes shall be levied by the county commissioners at the time of their meeting in September of each year; such taxes shall be based upon an itemized statement of the county expenses for the ensuing year, commencing the first of December next ensuing, which statement and tax levy shall be entered of record among their proceedings, and no greater levy of county tax shall be made upon the taxable property of any county than will be equal to said estimated amount of expenses, with an excess of five per cent of the same. The tax voted by incorporated cities, villages and school districts, shall be certified by the proper authorities to the county clerk, on or before the first day of September in each year: *Provided*, That cities and villages having charters, authorizing to levy and collect taxes, shall be exempt from the provisions of this section. The rate per centum of all taxes, except the territorial tax and such other taxes, the rate of which may be fixed by law. shall be calculated and fixed by the county clerk according to the limitation hereinafter prescribed: *Provided*, That if any county, city, village or school district shall return a greater amount than the prescribed rates will raise, then the county clerk shall only extend such amount of tax as the limited rate will permit.

Rate of taxation.

SEC. 1670. There shall be levied annually, on each dollar of taxable property in the territory, as assessed and entered on the tax lists, for the several purposes enumerated, taxes at the rate specified as follows: For territorial purposes, such amount as may be levied by the territorial board of equalization, not exceeding two mills; for county purposes, such amount as may be levied by the county commissioners, the rate of which shall not exceed sixteen mills: for roads and bridges, the rate of which shall not exceed three mills; for support and benefit of the poor, the rate of which shall not exceed three mills; for general school purposes, not less than two nor more than five mills: for school district purposes, such sum as may be voted at any legal meeting of the qualified voters of the district, the rate of which shall not exceed five mills: *Provided*, That nothing in this section shall be construed to prevent any county, city, village or school district from making a levy sufficient to pay principal or interest on bonds now outstanding, nor prevent the county commissioners of any county, nor the corporate authorities of any city, village or school district, from levying any tax which by any special law they may be authorized to levy.

In whose name property listed.

SEC. 1671. Every inhabitant of this territory of full age and sound mind, shall list all property subject to taxation in this territory, of which he is the owner, or has control or management in the manner hereinafter directed; but the property of a ward shall be listed by his guardian; of a minor having no guardian, by his father, if living, if not, then his mother, if living, if not, then by the person having the property in charge; of a married woman, by herself; of a beneficiary, for whom the property is held in trust, by the trustee. The property of every deceased person shall be listed by the executor or administrator. The property of persons or corporations, whose assets are in the hands of receivers, shall be listed by such receivers; of a body corporate, by its principal accounting officer, agent or partner; property under mortgage or lease shall be listed by and taxed to the mortgagor or lessor, unless it be listed by the mortgagee or lessee.

Who deemed owners.

SEC. 1672. Commission merchants, and all persons trading and dealing on commission, and consignees authorized to sell, when the owner of goods does not reside in the county in which such commission merchants, persons or consignees are doing business, are, for the purpose of taxation, to be deemed the owners of the property in their possession.

Annual assessment at cash value.

SEC. 1673. All real property in this territory subject to taxation, shall be listed and assessed annually, with reference to its value on the first day of June, and in the county where it shall be on that date; but if the owner resides out of the territory or fails to return his property to the assessor, it shall be listed and taxed where it shall then be. All taxable property is to be listed and valued at its full cash value in money, having regard to its quality, locality, natural advantages, the general improvement in the vicinity, and all other elements of its value.

Horses, etc.

Provided, That horses, mules, cattle and sheep running at large and not being worked, shall in all cases be returned and assessed in the county in which they are being herded or kept on the first day of June in each year.

Assessment of stock.

SEC. 1674. When any stock is driven into a county for the purpose of grazing therein, at any time previous to the first day of December in any year, it shall be liable to be assessed for all taxes leviable in that county for that year, the same as if it had been in the county at the time of the annual assessment, and it shall be lawful for the proper officers to assess and collect the same at any time after the usual time of assessment and collection: *Provided*, That such stock has not been regularly assessed in some other county of the territory for that year, and it shall be the duty of the county assessor, when required by the person having such stock in charge, to give a certificate of assessment, stating the number, kind and value of stock assessed, and such certificate shall be sufficient evidence of legal assessment of such stock for that year:

And provided further, That if any assessor shall fraudulently give to any person such certificate, or any person shall, in any manner, illegally obtain such certificate, he shall, on conviction, be fined in any court in the territory having competent jurisdiction, in any sum not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months, or both, at the discretion of the court. All fines resulting from the provisions of this section shall be for the use and benefit of the county in which the assessment should be properly made.

Assessment of railroad property.

SEC. 1675. Railroad property shall be assessed as follows: On the first Monday in September in each year the territorial board of equalization shall meet at the executive office, and they shall meet from day to day thereafter until the business of said board, as hereinafter provided, shall be accomplished. The duties of said board shall be to assess all the property in this territory belonging to railway corporations, except lots or parcels of real estate owned by the road in each county, and improvements thereon, and except depots, machine shops and other improved property connected with such road and located in any county, which shall be taxed in the county where situate. The president, vice president, general superintendent, auditor, or other general officer of any corporation operating any railway in this territory shall furnish said board on or before the first day of August in each year, a statement signed and sworn to by one of such officers, showing in detail, for the year ending on the thirty-first day of December preceding:

First. The whole number of miles owned, operated or leased in the territory by such corporation, making the return and value thereof per mile, with a detailed statement of all property of every kind, and the value, located in each county in the territory.

Second. Also a detailed statement of the number and value thereof of engines, passenger, mail, express, baggage, freight and other cars, or property owned by such railway, and on railways, which are a part of lines extending beyond the limits of this territory, the return shall show the actual proportion of the amount and full cash value of the rolling stock in use on the corporation's lines, which is necessary for the transportation of the freight and passengers, and the operation of the railroad in this territory, during the year for which the return is made. The return shall also show the amount and value of property hereinafter designated in this section, and such further information shall be furnished as the board may in writing require. If said officers fail to make such statement, said board shall proceed to assess the property of the corporation so failing, and shall add thirty per cent. to the value thereof, as ascertained and determined by said board. The said property shall be valued at its full cash value, and the assessments shall be made upon the entire railway within this territory, and shall include the right-of-way, road-bed, bridges, culverts, rolling stock, and all other property exclusively used in the operation of such railway. In assessing said railway and its equipments said board shall take into consideration all matters connected with said road necessary to enable them to make a just and equitable assessment of said railway property. On or before the fifteenth day of September in each year, said board shall transmit to the county clerk of each county through which any railway may run, a statement showing the length of the main track of each railway within the county, and the assessed value per mile of the same, as fixed by a *pro rata* distribution per mile of the assessed value of the whole property herein specified; said statement shall be entered upon the proper record of the county. At the first meeting of the board of county commissioners held after said statement is received by the county clerk, they shall make, and cause the same to be entered in the proper record, an order stating and declaring the length of the main track, and the assessed value of such railway, lying in each municipal corporation within their county through which said railway runs, as fixed by the above named board, which shall constitute the taxable value of said property for taxable purposes; and the county clerk shall transmit a copy of said order to the city council or trustees of such municipal corporation. All such railway property shall be taxable upon said assessment, by the same officers and for the same purposes as the property of individuals within such counties and municipal corporations. The provisions of this section shall be applied, so far as the same are applicable, in the assessment and taxation of the property of telegraph companies: *Provided*, That in lieu of all other taxes, there shall be levied and collected on each and every mile of wire operated or worked, the sum of forty cents annually.

Insurance companies.

SEC. 1676. All insurance companies of every description, whether existing in this or other states and territories, and operating in this, shall be taxed as other persons or corporations, upon the amount of premiums taken by them during the year previous to the listing in the county where the agent conducts that business, less actual losses paid during the year. and the agent shall render the list and shall be personally liable for the tax, and if he refuses to render the list, or to swear to the same, the amount may be assessed according to the best knowledge and discretion of the assessor.

Mines.

SEC. 1677. The net proceeds of mines shall be taxed as now required by sections 1047, 1048, 1049 and 1050 of article 2, of the fifth division of the revised statutes [sections 1791, 1792, 1793 and 1794, of the fifth division of the compiled statutes] relating to the taxation of mines, except the statement therein required, must be returned to the assessor, on or before the first day of June of each year, and shall embrace the net proceeds of the year preceding the first day of June in each year.

Deductions from credits.

SEC. 1678. In making up the amount of credits which any person is required to list, he will be entitled to deduct from the gross amount the amount of all *bona fide* debts owing by him, but no acknowledgement of indebtedness, not founded on actual consideration, and no such acknowledgment, made for the purpose of being so deducted, shall be considered a debt within the intent of this section; and no person shall be entitled to a deduction on account of an obligation of any kind given to an insurance company for the premium of insurance, nor on account of any unpaid subscription to any institution or society, nor on account of a subscription to, or installment payable on the capital stock of any company or incorporation; and no liability of any person or persons as surety for another, shall be deducted; and no deduction shall be made in any case, unless the party claiming such deduction, shall disclose to the assessor under oath, the the name or names of the person or persons, to whom such party is indebted, and the amount of such indebtedness to each, and also that such indebtedness is not barred by the statute of limitations.

Agent

SEC. 1679. Any person acting as the agent of another, or having in his possession, or under his control or management any money, notes or credits, or personal property belonging to such other person, shall be required to list the same at their full cash value; and if he refuses or neglects to render the list or to swear to the same, the amount of such money, property, notes or credits, shall be listed and valued acccording to the best judgment of the assessor.

SEC. 1680, The stockholders of every bank within this territory, whether such bank has been organized under the banking laws of this territory or of the United States, shall be assessed and taxed on the value of their shares of stock therein, in the county, town, district, city or village, where such bank or banking association is located and not elsewhere, whether such stockholders reside in such place or not; such shares shall be listed and assessed annually, with regard to the ownership and value thereof, on the first day of June of each year. To aid the assessor in determing the value of such shares of stock, the accounting officer of every such bank shall furnish a statement to the assessor, verified by oath, showing the amount and number of such shares of the capital stock of such bank, the amount of its surplus or reserve fund, and the amount of its legally authorized investments in real estate, which real estate shall be assessed and taxed as other real estate is assessed and taxed under this act. The assessor shall deduct the amount of such investments in real estate from the aggregate amount of such capital and surplus fund, and the remainder shall be taken as a basis for the valuation of such shares of stock in the hands of the stockholders, subject to the provision of law requiring all property to be assessed at its true and full value. The shares of capital stock of National banks not located in this territory held in this territory, shall not be required to be listed under this act, and the accounting officers of every bank, whose capital is not represented by shares of stock, and every private banker, broker or stockjobber, shall make out and deliver to the assessor, when required to list personal property, a statement which he shall verify by oath, showing:

Stocks and stockholders.

First. The amount of money or hand or in transit.

Second. The amount of funds in the hands of other banks, brokers, or others, subject to draft.

Third. The amount of checks or cash items, the amount thereof not being included in either of the preceding items.

Fourth. The amount of bills receivable discounted or purchased and other credits due or to become due and accounts receivable.

Fifth. The amount of bonds and stocks of every kind, except United States bonds and shares of capital stock of joint stock or other companies, or corporations, held as an investment, or in any way representing assets.

Sixth. All other property appertaining to said business, other than real estate, which real estate shall be listed and assessed as other real estate is listed and assessed under this act.

Seventh. The amount of all deposits made with them by other parties.

Eighth. The amount of all accounts payable, other than current deposit accounts.

The amount of the seventh item shall be deducted from the aggregate amount of the first, second and third items, and the remainder, if any, shall be listed as money and credits as provided in section 1686 of this act. The amount of the eighth item shall be deducted from the amount of the fourth item, and the remainder, if any, shall be listed as credits. The amount of the fifth item shall be listed as bonds and stocks, and the sixth item shall be listed the same as other similar personal property is listed under this act.

Same. SEC. 1681. In every bank and banking office there shall be kept at all times a full and correct list of names and residences of the stockholders, owners or parties interested therein, showing the number of shares and the amount held, owned or controlled by each party in interest, which statement or list shall be subject to the inspection of the officers authorized to assess property for taxation; and it shall be the duty of the accounting officer, or cashier of each bank or banking institution to furnish the assessor with a duplicate copy of such statement, verified by oath, which shall be returned to the county clerk and filed in his office.

Same. SEC. 1682. To secure the payment of taxes on bank stock, or banking capital, it shall be the duty of every bank, or the managing officer or officers thereof, to retain so much of any dividend, or dividends belonging to such stockholders or owners, as shall be necessary to pay any taxes levied upon their shares of stock or interest, respectively, until it shall be made to appear to such bank, or its officers, that such taxes have been paid. And any officer of such bank, who shall pay over, or authorize the paying over, of any such dividend or dividends, or any portion thereof, contrary to the provisions of this section, shall therefore become liable for such tax, and if the said tax shall not be paid, the county treasurer where such bank is located, shall sell such share or shares or interest, to pay the same like other personal property; and in case of sale, the provisions of law in regard to the transfer of stock, when sold on execution, shall apply to such sale.

SEC. 1683. The assessor of each county is directed on or before the first day of May in each year to leave with each person resident in his county, of full age and sound mind, at the usual place of residence, or at the office or other place of business of such person, a written or printed notice, requiring him to make out and return to the assessor, at the time and place therein specified, a statement or list of his property, which, by law, is subject to taxation, and to leave a blank form upon which said list may be made; but if the person is prepared to render his list at the time the notice is left, it shall be the duty of the assessor to receive it at that time.

Blank to be left with or mailed to property owner.

SEC. 1684. The county clerk shall annually provide the necessary assessment books and blanks at the expense of the county. He shall make out in the real property assessment book complete lists of all lands or lots subject to taxation, showing the names of the owners, if to him known, and if unknown, so stated opposite each tract or lot, the number of acres and the lots or parts of lots or blocks included in each description of property, and for the purpose of accuracy and completeness he shall compare said lists with the maps and plats in his office. In the case of desert land claims and mineral entries located upon unsurveyed lands, and upon which final proof has been made, it shall be considered a good and valid description, when listed on the roll, by the numbers given and used, describing the same in the land office where said entry was made. Said books and blanks shall be delivered to the assessor by the county clerk on or before the first day of January, with such instructions from the county board as to insure full and uniform assessments and returns. Improvements on real estate shall be valued separately, and a column shall be provided in said real estate assessment book for that purpose and another column for the total valuation of real estate and the improvements thereon.

Assessment books, blanks, etc; description of property.

SEC. 1685. It shall be the duty of every person owning or having charge of property in this territory, subject to taxation, to make out and deliver to the assessor, on or before the first day of June in each year, a correct list of the same as required by law, whether he shall receive from the assessor a notice to do so or not, and every assessment made against property subject to taxation, shall be valid in all respects whether such notice was received or not.

Owner to deliver to assessor a correct list

SEC. 1686. This list shall contain:

What list shall contain

First. His name and postoffice, his lands by section parts of section, township and range and number of acres; and when such part of section is not a legal subdivision, some other description, sufficient to identify it, and his town lots, naming the town in which they are situated, and their proper description by number of lot and block or otherwise, according to the system of numbering in the town.

Second. His personal property, or property for which he is agent, by the following particulars: Value of merchandise; amount of capital employed in manufactures; number and value of horses; number and value of mules; number and value of asses; number and value of cattle; number and value of sheep; number and value of swine; number and value of other animals; number and value of carriages and other vehicles of every description; amount of money and credits; number and value of clocks and watches; value of jewelry, gold and silver plate; number and value of musical instruments; value of household furniture; value and number of shares of bank stock; value of bonds and stock or shares in any other corporation or company; value of all other property not enumerated, but the character of such property and the separate value thereof must be specifically shown on said list.

Oath.

SEC. 1687. The list shall be signed and sworn to by the person making it, and the oath may be administered either by the assessor, who is hereby authorized to administer the same, or by any other officer authorized to administer oaths, and shall be duly certified, and the oath may be printed upon the blank forms, and shall be in substance as follows:

I, ..., do solemnly swear (or affirm) that according to the best of my knowledge and belief, the above list contains a full and correct statement of all property subject to taxation, which I, or any firm of which I am a member, or any corporation, association or company, of which I am president, cashier, secretary or managing agent, own, possess or control, and which is not already assesssed: *Provided,* That any person required by this act to make oath to such list, shall live remote from any one authorized to administer such oath, and the assessor not present, he shall in that case sign said oath, which shall be witnessed by some qualified elector of the county, and it shall have the same force and effect as if duly attested by one authorized to administer oaths.

SEC. 1688. If any person, who is known to the assessor to be liable to give in a list or pay taxes, agreeably to the provisions of this act, shall neglect or refuse to give in his list on or before the first day of June in each year, the assessor shall fill out a list for such person, putting therein all taxable property, not otherwise listed, which he has reason to believe is owned by said person, liable to taxation, at its present full cash value. The assessor, when requested, shall deliver or mail to the person assessed, a copy of said list, showing the valuation of the property so listed, which copy shall be signed by the assessor.

If owner fails to make list, assessor shall make same.

Penalty for concealing, etc.

SEC. 1689. Any property wilfully concealed, removed, transferred, or misrepresented by the owner or agent thereof, to evade taxation, upon discovery, shall be assessed by the assessor at its true cash value, and the owner thereof shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than five, nor more than one hundred dollars; and the assessor or county clerk shall examine under oath any person or persons whom he has reason to believe possesses any knowledge of such wilful concealment, removal or transferment, or misrepresentation.

Penalty for failure of duty by assessor.

SEC. 1690. If any assessor shall receive and accept of the list of any person not made, sworn or affirmed to, and perfected in the manner hereinbefore prescribed, he shall, for each list so received and accepted by him, contrary to this act, forfeit the sum of twenty-five dollars, to be deducted from his compensation by the county commissioners, or be collected by suit brought upon his official bond.

Duty of person having no property

SEC. 1691. If any person with whom the assessor shall have left a notice, requiring him to make out a list of property for taxation, shall have no property, which by this act he is required to list, either in his own account or on behalf of others, he shall set forth such facts on the blanks left with him by the assessors, or otherwise, and shall make oath or affirmation to the truth thereof, and return the same to the assessor, on or before the first day of June; and every person owning or having charge of property subject to taxation, and required by this act to list the same, who shall fail, neglect or refuse to do so, as herein required, or who shall return a list known to be erroneous or defective, either as to the description of real estate, number, value or amount of personal property, or who shall wilfully make, or fail to make, in such list, any statement whatever, whereby he shall avoid any assessment of taxes proper to be made against him, shall be subject to a penalty of not less than one hundred, nor more than one thousand dollars, to be recovered by the county commissioners, for the use of the county, in any court of competent jurisdiction, and it shall be the duty of any assessor or county clerk having knowledge of a violation of the provisions of this section, to report the same to the county attorney for prosecution.

Statements to be preserved.

SEC. 1692. The said statements returned to the assessor shall be endorsed with the name of the person, firm or corporation whose property is therein listed, when known, and the assessor shall file them in alphabetical order, and return them to the county clerk's office, when he returns his assessment roll, to be preserved.

Assessor to deliver assessment book to clerk.

SEC. 1693. On or before the fifteenth day of July, annually, the assessor shall make out and deliver to the county clerk an assessment book, or roll, containing in tabular form and alphabetical order, the names of persons and bodies in whose names property has been listed in his county, with the several species of property and the value, as hereinbefore indicated, with the columns of numbers and value footed, and in a column to be provided for that purpose he shall write the words: "By the Assessor," when the list was made by himself, with the words "Refused to list" or "Refused to swear," or "Absent," or "Sick," as the case may be. For each and every day the assessor shall fail or neglect to return said assessment roll, after the fifteenth day of July, he shall forfeit the sum of fifty dollars, which shall be deducted from his salary by the county commissioners.

School district to be numbered in assessment book.

SEC. 1694. It shall be the duty of the assessors, when assessing personal property, to designate the number of the school district in which each person assessed is liable for tax, which designation shall be made by writing the number of the district opposite each assessment, in the column provided for that purpose, in the assessment book. When the personal property of any person is assessable in several school districts, the amount in each shall be assessed separately, and the name of the owner placed opposite each amount.

Additional assessments.

SEC. 1695. If by any means any property, real or personal, shall be omitted in the assessment of any year, or series of years, and not put upon the assessor's books, the same when discovered shall be assessed by the assessor for the time being, and placed upon his book before the same is returned to the county clerk, with all the arrearages of taxes, which should have been assessed and paid in former years charged thereon, or in case of failure or neglect of the assessor, the same shall be assessed by the county clerk, as provided for "additional assessments."

Separate assessment of lots, etc.

SEC. 1696. Each tract of land, and each town or city lot, shall be valued and assessed separately, except when one or more adjoining tracts or lots are returned by the same person, in which case they may be valued and assessed jointly.

SEC. 1697. The assessor must take and subscribe an oath to be certified by the officer administering it, to be attached to the assessment book, to be substantially as follows:

Oath of assessor

"I............assessor of............county, do swear, that through the whole time allotted by law to make this assessment, I have made diligent inquiry and examination, to ascertain all the property within the county, subject to taxation, and that I have assessed it on the assessment book, equally and uniformly, according to the best of my judgment, information and belief, at its full cash value, and that I have faithfully complied with all the duties imposed on the assessor, under the revenue laws, and that I have not imposed any unjust assessment through malice or ill will, nor allowed any one to escape a just and equal assessment through favor or reward." But the failure to take or subscribe such an oath, or any oath, will not in any manner affect the validity of the assessment.

Equalization.

SEC. 1698. The county commissioners of each county in this territory shall constitute a board of equalization for the correction and completion of the assessment rolls for their respective counties. Said board shall hold two regular meetings in each year at the office of the county clerk at the county seat as follows, viz: Commencing on the first Monday in August and continuing not less than three nor more than ten consecutive days, Sundays excepted; and on the third Monday of August, and continuing not less than one nor more than three consecutive days. Said board shall, at its first meeting, have power to supply omissions in the assessment roll, and for the purpose of equalizing the same, may increase, diminish or otherwise alter and correct any assessment or valuation. In case any material changes are made by said board, in the assessment of any person or persons, at said first meeting, the county clerk shall, at the close of said meeting, notify said person or persons, by letter

—71

or otherwise, that such change has been made. Said board shall, at its second meeting, sit to hear complaints from those aggrieved by said changes or otherwise, and shall have power to so adjust said assessment roll as in their judgment is proper and right. The county clerk shall keep an accurate record of the proceedings and orders of said board, showing the facts upon which their action is based. After final adjournment the county commissioners shall not have the power to change the assessed valuation of property of any person or reduce the aggregate amount of the assessed property of the county.

Notice of meeting.

SEC. 1699. The county clerk shall give at least ten days' notice, by publication or by posting five written or printed notices of the time and place of meeting of the county board of equalization.

Duplicate abstracts

SEC. 1700. Immediately after the assessment roll is completed the county clerk shall calculate the changes of the assessment lists, determined by the county board of equalization, and make corrections accordingly. Having made such corrections of the real or personal lists, or both, as the case may be, he shall make duplicate abstracts of the same, one copy of which he shall file in his office and one copy he shall forward to the territorial auditor on or before the first Monday of September following each county equalization; but the territorial board of equalization is authorized to diminish or add to the above list, and to require such different or further matters to be returned as it may deem advisable.

Penalty for failure of clerk to perform his duty.

SEC. 1701. If any county clerk shall refuse or neglect to prepare an abstract of the assessment roll of his county, and forward the same to the territorial auditor, as required in the preceding section, he shall forfeit to the territory the sum of five hundred dollars, to be recovered in the name of the Territory of Montana by civil action; and the certificate of the auditor, authenticated by the seal of his office, setting forth the failure of the clerk to comply with the provisions of said section, shall be *prima facie* evidence on the trial of such action.

Territorial board of equalization and their powers.

SEC. 1702. The governor, attorney general and auditor of the territory, with one qualified elector, who shall be a freeholder, from each judicial district of the territory, to be appointed by the governor with the advice and consent of the council, shall constitute the territorial board of equalization. The members from the odd numbered districts shall be appointed for four years, and those from the even numbered districts, for the first term for two years, but thereafter for four years. The governor shall fill all vacancies that may occur in said board by special appointments. The governor shall be *ex-officio* president of said board and the auditor shall act as secretary. The board may adjourn from day to day and may employ such clerical assistance as may be deemed necessary to facilitate its labors. The members of said board shall receive the same per diem and mileage as may be allowed by law to members of the legislature. The said board shall meet annually on the second Monday in September, at the office of the territorial auditor, and each member having taken the oath prescribed by law, they shall examine and compare the returns of the assessment of the property in the several counties of the territory, as shown in the abstracts returned by the several county clerks, and proceed to equalize the same, so that all the taxable property in the territory shall be assessed at its true and full value. In the performance of their duties they shall be governed by the following rules:

First. They shall add to the aggregate valuation of the real property of every county which they believe to be valued below its true and full value in money, such per centum in each case as will bring the same to its true and full value in money.

Second. They shall deduct from the aggregate valuation of the real property of every county, which they believe to be valued above its true and full value in money, such per centum in each case as will reduce the same to its true and full value in money.

Third. If they believe that the valuation of the real property of any town or district in any county, or of the real property of any county, not in towns, villages or cities, should be raised or reduced, without raising or reducing the other real property of such county, or without raising or reducing it in the same ratio, they may in every such case add to or take from the valuation of any one or more of such towns, villages or cities, or of the property not in towns, villages or cities, such per centum as they believe will raise or reduce the same to its full and true value in money.

Fourth. They shall add to the aggregate valuation of any class of personal property of any county, town, village or city, which they believe to be valued below the true and full value thereof, such per centum in each case as will raise the same to its true and full value in money.

Fifth. They shall take from the aggregate valuation of any class of personal property, in any county, town, village or city, which they believe to be valued above the true and full value thereof, such per centum as will reduce the same to its true and full value in money.

Sixth. They shall not reduce the aggregate valuation of all property in the territory, as returned by the several county clerks, more than five per centum on the whole valuation thereof.

Seventh. The secretary shall keep a full record of the proceedings of the board, and the same shall be published in the annual report of the territorial auditor.

Transcript of proceedings to be sent by territorial auditor to each county clerk

SEC. 1703. When the territorial board completes the equalization, the territorial auditor shall transmit to each county clerk a transcript of the proceedings of the board, specifying the per centum added to, or deducted from, the valuation of the real property of each of the several towns, villages and cities, and of the real property not in towns, villages or cities; in case an equal per centum has not been added to, or deducted from each, and specifying also the per centum added to or deducted from the several classes of personal propetry in each of the towns, villages and cities in the territory; and the county clerk shall add to or deduct from each tract or lot of real property in his county the required per centum on the valuation thereof, as it stands after the same has been equalized by the territorial board of equalization, adding in each case any fractional sum of fifty cents or more, and deducting in each case any fractional sum of less than fifty cents, so that the value of any separate tract or lot shall contain no fraction of a dollar; and shall also add to or deduct from such class of personal property in his county, the required per centum on the valuation thereof, as it stands after the same has been equalized by the territorial board of equalization, adding or deducting, in the manner as aforesaid, any fractional sum, so that the value of any separate class of personal property shall contain no fraction of a dollar.

Tax lists.

Sec. 1704. The county clerk shall make out the tax lists according to the prescribed form, and to correspond with the assessment books, in reference to ownership and description of property, with columns for the valuation and for the various items of tax included in the total amount of all taxes set down opposite each description of property. The amount of all special taxes shall be entered in the proper columns, but the general taxes may be shown by entering the rate per cent. of each tax at the head of the proper column, without extending the same, in which case a schedule of the rates per cent. of such taxes shall be made on the first page of each tax list. Following the real estate in said list the names of owners of personal property and the valuation thereof shall be entered in alphabetical order, and the taxes extended as above prescribed. The rate per cent. necessary to raise the required amount of the various taxes shall be calculated on the assessed valuation of property as determined by the territorial board of equalization; but in calculating such rates, no rate shall be used resulting in any fraction other than a decimal fraction, or less than one-tenth of a mill; and in extending any tax, whenever it amounts to the fractional part of a cent, it shall be made one cent.

Tax lists to be placed in hands of treasurer.

SEC. 1705. An entry shall be made upon the tax list showing what it is, and for what county and year it is, and the county clerk shall attach to the list his warrant, under his hand and official seal, in general terms, requiring the treasurer to collect the taxes therein levied, according to law; and no informality in complying with the above requirements shall render any proceedings for the collection of taxes illegal. The clerk shall cause the list to be delivered to the treasurer of the county by the first day of November, and shall take his receipt therefor, and such list shall be full and sufficient authority for the treasurer to collect all taxes contained therein. For each and every day the county clerk shall fail or neglect to so deliver said tax list, after the first day of November, he shall forfeit the sum of fifty dollars, which shall be deducted from his salary by the county commissioners.

Collection of taxes

SEC. 1706. The treasurer, on receiving the tax list and warrant, shall proceed to collect the tax therein levied, and the lists and warrants shall be his authority and justification against any illegality in the proceedings prior to receiving the list.

How collection enforced if owner removes from county.

SEC. 1707. If at any time after the assessment thereof, the owner or other person shall remove, or cause to be removed, from the county in which the assessment was made, without paying the taxes thereon, any horses, cattle, mules, asses, sheep or other property, it shall be the duty of the county treasurer of the county in which such assessment was made, to send to the clerk of the county to which such animals or property shall have been removed, and where they shall then be, a copy of said assessment as found upon his books, whereupon the said clerk shall deliver the same to the treasurer of his county, charging him therewith, and the said treasurer shall proceed forthwith to collect said taxes, with twenty per cent. penalty for collecting, and if not paid upon demand, may proceed by distraint, as provided in this act, and after deducting from the taxes so collected his percentage, the remainder shall be paid over to the treasurer of the county in which the assessment was made.

Treasurer to be collector of all taxes

SEC. 1708. The county treasurer shall be the receiver and collector of all the taxes extended upon the tax list of the county, whether levied for territory, county, city, school, town, poor, bridge, road, or other purposes, anything in the charter of any city or town, or in any other act of the legislature, heretofore passed, to the contrary notwithstanding; and also of all fines, forfeitures or penalties received by any person or officer for the use of his county; and he shall proceed to collect the same according to law, and place the same when collected to the credit of the proper funds; but this provision shall not be so construed as to include any fines and penalties accruing to any municipal corporation for the violation of its ordinances, and which were recovered before any city justice.

Correction of errors in names.

SEC. 1709. If on the assessment roll or on the tax roll there be any error in the name of the person taxed, the name may be corrected and the tax collected from the person intended, if he shall be taxable and can be identified by the treasurer, assessor or county clerk The treasurer shall, within five days from the time he shall receive the assessment roll from the clerk, direct to each taxpayer of his county, a written or printed notice of the amount of tax due from such taxpayers. and the time the same becomes due. Such notice shall be directed to the nearest postoffice to which said taxpayer resides. Printed blanks for said notices, and postage for the same, shall be furnished said treasurer by the board of county commissioners. No other demand for taxes shall be necessary, but it shall be the duty of every person subject to taxation to attend at the office of the treasurer between the thirty-first day of October and the first day of December of each year and pay his taxes; and if any person shall neglect or fail to pay such tax, until after the thirtieth day of November following the levy of the same, the treasurer may collect the same by distress and sale of his property as provided in this act.

SEC. 1710. The treasurer upon the payment of any tax, shall give to the person paying the same, a receipt therefor, specifying therein the land, town or city lot, or other property, on which said tax was levied, according to its description on the tax list, or in some other sufficient manner, and the year or years for which the tax was levied. The said receipt shall have a duplicate stub, showing the name of the person, description of the property, the amount and date of payment, and the page and line of said tax list whereon said tax is charged.

Receipt

SEC. 1711. Upon the payment of any tax charged on the tax list, the treasurer shall enter on the proper line in said list, after the word "paid," the date of payment, name of person paying, and number of receipt issued therefor, in suitable columns to be provided in said tax list for that purpose.

Payment to be noted.

SEC. 1712. If the treasurer has reason to believe that any person charged with taxes upon personal property is about to remove such property from the county, or to sell, transfer conceal or otherwise dispose of the same, or cause the same to be done, such treasurer may at any time after such taxes are due, proceed to collect the same, with costs and charges, by distress and sale of any personal property, of such person in the manner provided in this act.

Distress for taxes in case owner about to remove from county.

SEC. 1713. All taxes levied or assessed upon personal property of any kind whatsoever, shall be and remain a lien upon the property so levied upon until the whole amount of such tax is paid; and if such tax is not paid before the first day of December next succeeding such levy, a penalty of twenty per cent. shall be added thereto and become a part thereof, and it is hereby made the duty of the county treasurer to collect the same by distress and sale of any of the personal property of the person assessed; and if such property so taxed, or any part thereof, cannot be found in his county, then the county treasurer shall sue the person so taxed, by attachment, garnishment, or otherwise before any court of his county having jurisdiction; and upon the trial of any such cause the tax roll, or a certificate from the county treasurer of the amount of such tax, and that the same is not paid, shall be *prima facie* evidence that the amount claimed is due and unpaid, and may obtain a judgment for the amount of such tax, together with all costs, interest and charges thereon, and may have execution therefor against any of the property of such person, real or personal.

Tax lien upon personal property

Lien upon real estate

SEC. 1714. The taxes assessed upon real property shall be a lien thereon from and including the first day of June in the year in which they are levied until the same are paid.

Expenses.

SEC. 1715. No expenses incurred in the collection of taxes shall be paid by the territory.

One-fourth of taxes paid in warrants.

SEC. 1716. One-fourth of all territorial taxes and licenses may be paid in territorial warrants; one-fourth of the county tax and license may be paid in county warrants; and the balance shall be paid in money.

Endorsement upon warrant.

SEC. 1717. When a warrant is received by the treasurer in payment for taxes, he shall endorse on it the amount for which it was received and the date thereof; and from that date the warrant shall be regarded as cancelled and cannot be reissued.

Time for payment not to be extended.

SEC. 1718. It shall be unlawful for the treasurer or board of county commissioners of any county to extend the time for the payment of any tax, interest, or penalty thereon, after the same shall have become due and payable, as provided in this act.

Proceedings in case of distraint.

SEC. 1719. When the treasurer distrains goods and chattles belonging to the person charged with such delinquent taxes he may keep them at the expense of the owner and shall give notice of the time of their sale within five days after the day of taking, in the manner constables are required to give notice of the sale of personal property on execution; and the time of the sale shall not be more than ten days from the day of the taking; but he may adjourn the sale from time to time for a period not exceeding ten days, and shall adjourn when there are no bidders; and in case of an adjournment, he shall put up a notice thereof at the place of sale. Any surplus remaining above the taxes, charges for keeping, and fees for sale, which shall be the same as on execution sales, shall be returned to the owner; and the treasurer, shall on demand, render an account in writing, of the sale and charges.

Duty of corporation.

SEC. 1720. The president, treasurer, cashier, secretary or chief clerk of any corporation, the shares of which are taxable by law, at the request of the county treasurer shall give him a certificate under his hand, showing the number and amount of shares held, and the names of the holders thereof respectively, in such corporation, and the incumbrances thereon so far as to him known, and such treasurer, in default of payment by the corporation of the taxes due thereon as required by law, shall seize and sell the same and the purchaser thereof shall be admitted to all the rights, powers and privileges that the holders of such shares had at the time of seizing the same, and shall be entered by such corporation on their books as the owner of such shares.

Penalty.

SEC. 1721. If any corporation or any officer thereof, shall fail to comply with the provisions of the preceding section, such corporation shall forfeit to the territory the sum of not to exceed one thousand dollars, to be recovered by civil action in the name of the territory, in any court of competent jurisdiction.

Treasurer to have aid if resisted

SEC. 1722. If the treasurer be resisted or impeded in the execution of his office, he may require any suitable person or persons to aid him therein, and if any person shall refuse such aid, he shall forfeit a sum not exceeding fifty dollars, to be recovered by civil action; and the person resisting shall be liable as in the case of resisting the sheriff in the execution of civil process.

When tax becomes delinquent.

SEC. 1723. On the first day of December the unpaid taxes on real estate of the preceding year become delinquent, and thereupon a penalty of fifteen per cent. shall attach and be collected with the tax as hereinafter provided; but the treasurer shall continue to receive payments of the tax and added penalty until the day of sale for taxes.

Property erroneously taxed to be omitted.

SEC. 1724. It shall be the duty of the treasurer of the county, before making sale of any lots or land for unpaid taxes as provided in this act, to carefully examine and compare the delinquent list with the abstract of assessment roll and plat books in the office of the county clerk, and to omit from such sale all lots and lands doubly or erroneously assessed, so far as he is able to ascertain the same, and to make an itemized report to the board of county commissioners of his county, showing such double or erroneous assessment, aud the board of county commissioners on receipt of such itemized report, shall by resolution, to be entered in the proceedings abate the taxes levied upon such double or erroneous assessments. The territorial auditor shall allow to each county the amount of territorial tax that may have been from time to time refunded to the taxpayer, as double or erroneous assessments, or refunded to the purchaser of real estate erroneously sold.

When property subject to sale.

SEC. 1725. All lands and lots, and all buildings, fixtures and improvements thereon, embraced within the term real estate, as defined in this act, and all the interest or title which any person or persons owning or claiming any such improvements may have in the land upon which the same are made, on which the taxes shall not have been paid before the first day of December of each year, shall be subject to sale as hereinafter provided for the sale of land for taxes.

List of property to be sold

SEC. 1726. The county treasurer shall, before the fifteenth day of January in each year, make out a list of all lands and town lots subject to sale, describing such lands and town lots as the same are described on the tax roll, with an accompanying notice, stating that so much of each tract of land or town lot described in said list as may be necessary for that purpose, will, on a day specified thereafter, and the next succeeding days, be sold by him at public auction at the county treasurer's office, for the taxes and charges thereon; *Provided*, *however*, That if such list should not be made until after the fifteenth day of January, the sale thereunder shall not be void, but the treasurer shall be liable for twenty-five dollars for each day said list is not made out after said date. Such notices may be in the following form:

.... Treasurer's office, ... county of ...., Territory of Montana, ...

To all persons, companies or corporations who have or claim any estate, right, title or interest in or claim to or lien upon any of the several pieces or parcels of land in the list hereto attached, take notice that I will, according to law, offer at public sale at the office of the treasurer of the county of ...., and the Territory of Montana, on the .... day of ...., 18.., and succeeding days, commencing at the hour of .... o'clock a. m. of said day, the following described real estate, situate in said county, on which the taxes for the year (or years) 18.. ..... have not been paid, ... pay said taxes, interest and penalties, to-wit:

Notice of sale.

SEC. 1727. The treasurer shall give notice of the sale of real property by the publication thereof once a week for four weeks in a newspaper in his county, published in the English language, the first of which publications shall be at least four weeks before the sale, and by a written or printed notice posted in a conspicuous place on or near the outer door of the office or building commonly used as the office of the treasurer for not less than four weeks before the sale, and if there be no newspaper published in the county, then like notice shall be given by posting one written or printed notice in each of five of the most public places of the county, and one on or near the door of the treasurer's office as above provided.

SEC. 1728. Every printer who shall publish such list and notice shall immediately after the last publication thereof transmit to the treasurer of the proper county an affidavit of such publication and five copies of such newspaper, made by such person to whom the fact of publication shall be known, and no printer shall be paid for such publication who shall fail to transmit such affidavit within fourteen days after the last publication. Such affidavit may be substantially in the following form, to-wit.

Affidavit of printer.

I, A. . B. , publisher (or printer) of the ...., a newspaper printed and published in the county of...... and Territory of Montana, do hereby certify that the foregoing notice and lists were published in said newspaper once in each week for successive weeks, the last of which publication was made prior to the .... day of ...., 18 ., and that copies of each number of said paper in which said notice and list were published were delivered by carrier or transmitted by mail to each of the subscribers of said paper according to the accustomed mode of business in this office.

A.... B....,
Publisher (or printer) of the ....

Territory of Montana, }
.... County. } ss.

. ... The above certificate of publication was subscribed and sworn to before me by the above named A............ B.........., who is personally known to me to be the identical person described in the above certificate, on the........day of............A. D. 18...... ....
........Seal. ....C... ....D...........

SEC. 1729. The county treasurer shall also make, or cause to be made, an affidavit of the posting of such list and notice as above required, all of which affidavits shall be deposited by him with the county clerk, to be there carefully filed and preserved.

Affidavit of treasurer.

SEC. 1730. A penalty of ten per centum upon the amount of all taxes due upon lands advertised shall be added by the treasurer immediately after advertising real estate for sale, and shall be collected by him in all cases; and such penalty so collected shall be credited to the general fund of the county by the treasurer.

Penalty of ten per cent. on delinquent tax for advertising.

SEC. 1731. When the last publication shall have been made, or notices posted for the length of time and in the manner required in this act, the notice shall be deemed to have been served and the treasurer to have acquired full and complete juris-

Jurisdiction of treasurer for purposes of sale diction to enforce against each piece or parcel of land in said published list described, the taxes, accrued penalties and costs upon it, then delinquent, so as to bind every estate, right and title, interest, claim or lien in law or equity, in or on such piece or parcel of land of every person, company or corporation, and such jurisdiction shall not be in any way affected by any error, irregularity or omission in the assessment or levy of the taxes, or in any other proceedings prior to publishing such list, nor by any mistakes in publishing said list, nor by any mistake in the amount of tax in such published list appearing against any piece or parcel of land therein described.

Tax sale.

SEC. 1732. On the day mentioned in the notice of sale, the treasurer is directed to offer at public sale at his (the treasurer's) office, in his county, all lands on which the taxes levied the preceding year, or any preceding year, still remain unpaid; but such sale shall not be void if not made until after the day named.

Return of sale.

SEC. 1733. At the first meeting of the board of county commissioners after such date, the treasurer is required to file in the county clerk's office a return of his sale of lands, retaining a copy in his office, showing the lands sold, the names of the owners, so far as known, and the names of the purchasers and the sums paid by them, and also a copy of the notice of the sale, with a certificate of the service, verified by an affidavit, and such certificate shall be evidence.

Manner of conducting sale.

SEC. 1734. On the day designated in the notice of sale, the county treasurer shall commence the sale of those lands and town lots on which the taxes and charges have not been paid, and shall continue the same from day to day, Sundays excepted, until each parcel shall be sold to pay the taxes and charges thereon, including all costs and penalties. If there shall be no bid for any tract offered, the treasurer shall pass it over for the time, and shall re-offer it at the beginning of the sale the next day, until the tracts are sold, or until the treasurer shall become satisfied that no more sales can be effected, when it shall become his duty to bid off, for the county, the lands and town lots remaining unsold, for the amount of such taxes, interest and costs thereon. When the county treasurer has so bid off any tract of land or town lot for the county, he shall issue to the county a certificate of purchase, as provided for in this act. Any person may at any time within three years from the date of such certificate, deposit with the treasurer of such county the total amount due upon such certificate and interest thereon since the date of such certificate, whereupon the clerk of the county shall assign such certificate to such person, and the treasurer shall give such person a receipt for any and all subsequent taxes and interests paid by such person, and thereupon such person shall be entitled to all rights and privileges, the same as though he were an original purchaser at the tax sale. No taxes assessed against any lands purchased by the county under the provisions of this section shall be payable by the county until the same shall have been derived from the sale or redemption of such lands.

Payment of purchase money.

SEC. 1735. When the treasurer sells any lands or lots for delinquent taxes, he shall receive the same kind of funds in payment thereof as he is required to receive in payment of taxes.

Sale not affected by mistake in name.

SEC. 1736. When any lands or town lots are offered for sale for any taxes, it shall not be necessary to sell the same as the property of any person or persons; and no sale of any land or town lot for taxes shall be considered invalid on account of its having been charged on the roll in another name than that of the rightful owner, or charged as unknown; but such lands must be in other respects sufficiently decribed on the tax roll to identify it, and the taxes for which it is sold be due and unpaid at the time of such sale.

What abbreviations may be used.

SEC. 1737. In all advertisements for the sale of real property, for taxes and entries required to be made by the assessor, county clerk, treasurer or other officer, in lists, books, rolls, certificates, receipts, deeds or notices, letters, figures and abbreviations, may be used to denote townships, ranges, sections, parts of sections, lots, blocks, dates and amount of taxes, interests, penalties, and costs. In all cases where any sum of money is indicated the words, "dollars" and "cents" shall be written or printed in the appropriate place or at the head of the columns of such sums of money, or the characters "$" for dollars and "C" for cents may be used.

Construction.

SEC. 1738. Whenever abbreviations or characters are used in any of the proceedings mentioned in this act, they shall respectively be construed and held as meaning and being the same name, word or thing as it is commonly known and understood to be by such abbreviation or character.

Treasurer's record of sales.

SEC. 1739. The county treasurer shall make a correct record of all sales of real estate for taxes in a well bound book to be kept by him for that purpose. Said book shall contain:

First. The date of sale.

Second. The name of the owner or owners thereof if known.

Third. The description of each tract of land or town lot sold.

Fourth. The name of the purchaser.

Fifth. The total amount of taxes, interest, penalties and costs at time of sale, and the year of the tax for which said sale was made.

Sixth. Columns for amount of subsequent taxes paid by the purchaser, and the date of payment.

Seventh. To whom assigned and the date of assignment.

Eighth. Names of persons redeeming and the date of redemption.

Ninth. Total amount paid for redemption.

Tenth. Names of persons to whom conveyed and date of deed. He shall also note in the tax list, opposite the description of the property sold, the fact and date of such sale and completion of such record, make and certify a true copy thereof, in a well bound book to be provided for that purpose, which shall be deposited with the county clerk of the county; and such book or books so certified shall be known as the record of tax sales of the county and shall be in all respects a part of the records of the county clerk's office, as fully as if they had been made by the clerk.

Manner of conducting sale.

SEC. 1740. In offering the lands for sale the treasurer shall state the amount for which each piece or parcel is to be sold and shall sell the same in fee to the highest bidder, who shall bid not less than the amount for which the same is to be sold. Upon application of the party entitled thereto the county clerk shall give to such 'party his order on the county treasurer for any money paid into the treasury on the sale of any piece or parcel of land in excess of the amount of taxes due from such person at the time of sale.

Same.

SEC. 1741. Should any person bidding fail to pay the amount due, the treasurer may again offer the land for sale if the sale has not closed; and if it has closed, he may again advertise it specially in the same manner as the original advertisement, and for not less than one week, when he may again offer and sell such lands or lots as provided in the forgoing section; or the treasurer may, at his option, recover the amount bid by civil action brought in the name of the couniy in any court of competenf jurisdiction.

Errors may be corrected.

SEC. 1742. Omissions, errors or defects in form in any assessment list or tax roll, when it can be ascertained therefrom what was intended, may be supplied or corrected by the assessor, at any time before the return of the assessment roll to the county clerk or by the county clerk at any time after the receipt of the said roll by him. When any omission, error or defect has been carried into a delinquent list, or any error appears in any publication, the list or publication may be amended by the treasurer, and republished as amended; or notice of the correction may be given in a supplementary publication, but such publication must be made in the same manner as the original publication, and not for less than one week.

Certificate of purchase.

SEC. 1743. The county treasurer shall make out, sign and deliver to the purchaser of any real property sold for the payment of taxes as aforesaid, a certificate of purchase, describing the property on which the taxes and costs were paid by the purchaser, as the same was described in the record of sales; and the total amount of all taxes, interest and costs on each tract or lot, for which the same was sold, as described in the record of sales, and that payment has been made thereof, with columns for subsequent taxes. Such certificate may be in the following form:

Treasurer's Office..........County of..........
Territory of Montana.

I hereby certify that at the sale of real estate, situate in the County of................Territory of Montana, for delinquent taxes for the year 18.., at the county treasurer's office, in the county aforesaid, on the...........day of... ......18. , in accordance with law................ .was the purchaser of the tract hereinafter described as having been sold, for which he paid the sum of money set opposite said tract, being the amount of taxes on the whole of said estate, to-wit:

Certificate may be assigned.

SEC. 1744. Such certificate of purchase shall be assignable by endorsement, and an assignment thereof, when entered upon the record of sales in the office of the county clerk and county treasurer, shall vest in the assignee or his legal representative, all the right and title of the original purchaser.

Payment of subsequent taxes.

SEC. 1745. Any person desiring to pay any subsequent taxes on any lands or town lots for which he holds the tax certificates, shall produce such certificates to the treasurer, who shall endorse thereon the amount of such subsequent taxes and the date of payment thereof, and shall enter the same in the book of tax sales opposite such lands or town lots, and the treasurer shall be entitled to receive as his fee therefor ten cents for each tract of land therein described. He shall also present such certificate to the county clerk, who shall enter the amount of such tax in the proper column in the record of tax sales in his office, and the clerk shall be entitled to receive as his fee therefor ten cents for each tract of land therein described.

Treasurer's deed.

SEC. 1746. At any time after expiration of the term of three years from the date of the sale of any lands for taxes, under the provisions of this act, on demand of the purchaser, his heirs or assigns, and on presentation of the certificate of purchase, the treasurer then in office shall make out a deed for each lot or parcel of land sold and remaining unredeemed, and deliver the same to the purchaser, his heirs or assigns. The treasurer shall be entitled to fifty cents for each deed made and acknowledged by him, and an additional fee of twenty-five cents for the acknowledgment thereof, to be paid by the purchaser. Whenever any certificate given by the treasurer for lands sold for taxes shall be lost or wrongfully withheld from the owner, and such lands shall not have been redeemed, the board of county commissioners may receive evidence of such loss and wrongful detention, and on satisfactory proof of the fact may cause a deed as aforesaid to be executed to such person as may appear to them the rightful owner of the land described in such certificate.

Form of deed.

SEC. 1747. Deeds executed by the treasurer shall be substantially in the following form:

"Know all men by these presents, that, whereas the following described real property, viz: (description of property taxed) situated in the county of................and Territory of Montana, was subject to taxation for the year (or years) A. D. ...., and, whereas, the taxes assessed upon said real property for the year (or years) aforesaid, remained due and unpaid at the date of the sale hereinafter named; and whereas, the treasurer of said county did, on the..........day of... .....A. D. ...., by virtue of the authority vested in him by law, at (an adjourned sale) the sale begun and publicly held on the...........day of...........A. D. 18...., expose at public sale at the office of the treasurer, in the county aforesaid, in substantial conformity with requirements of the statute in such cases made and provided, the real property above described for the payment of the taxes, interest and costs then due and remaining unpaid on said property; And, whereas at the time and place aforesaid, A........B........, of the county of .... and .... of .... having offered to pay the sum of .... dollars and .... cents, being the whole amount of taxes, interest and costs, then due and remaining unpaid on said property, for, (here follows a description of the property sold) which was the least quantity bid for, and payment of said sum having been made by him to the said treasurer, the said property was stricken off to him at that price.

And whereas, the said A........B........did, on the....day of........, A. D. 18...., duly assign the certificate of the sale of the property as aforesaid, and all his right, title and interest to said property, to E........F,........of the county of........,and ....of........ And, whereas, the said A..... B........(or E........F........) has paid subsequent taxes on said property the the amount of ....dollars and........cents.

And whereas, more than........years have elapsed since the date of said sale, and the said property has not been redeemed therefrom as provided for by law.

Now, therefore, I, C........D........, treasurer of the county aforesaid, for and in consideration of the said sum to the treasurer paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained, and sold, and by these premises do grant, bargain and sell unto the said A.... ....B........(or E........F........), his heirs and assigns, the real property last hereinbefore described, to have and to hold unto him, the said A..... B........(or E........F........), his heirs and assigns forever, subject, however, to all the rights of redemption by minors, insane persons or idiots, provided by law.

In witness whereof, I, C........D,........treasurer as aforesaid, by virtue of the authority as aforesaid, have hereunto set my hand and seal, this.... day of ...., A. D. 18....

[SEAL] C........D........, treasurer.

Territory of Montana, } *ss*
County of........ }

I hereby certify that before me .... in and for said county personally appeared the above named C........D........, treasurer of said county, personally known to me to be treasurer of said county, at the date of the execution of the above conveyance, and to be the identical person, whose name is affixed to the foregoing deed, and who executed the above conveyance as treasurer of said county, and who acknowledged the execution of the same to be his voluntary act and deed, as treasurer of said county, for the purpose therein expressed.

[SEAL] Given under my hand and seal this. . day of . . . ., A. D. 18. . . .

Effect of deed.

SEC. 1748. The deed shall be signed by the treasurer in his official capacity and acknowledged by him before some officer authorized to take acknowledgments of deeds, and when substantially thus executed and recorded in the proper record of titles to real estate, shall vest in the purchaser all the right, interest and estate of the former owner in and to the land conveyed, and also the right, title, interest and claim of the territory and county thereto, and shall be *prima facie* evidence in all courts of this territory in all controversies and suits in relation to the rights of the purchaser, his heirs and assigns to the land thereby conveyed, of the following facts:

First. That the real property conveyed was subject to taxation for the year or years stated in the deed.

Second. That the taxes were not paid at any time before the sale.

Third. That the real property conveyed had not been redeemed from the sale at the date of the deed.

Fourth. That the property had been listed and assessed at the time, and in the manner required by law.

Fifth. That the taxes were levied according to law.

Sixth. That the property was advertised for sale in the manner and for the length of time required by law.

Seventh. That the property was sold for taxes as stated in the deed.

Eighth. That the grantee named in the deed was the purchaser or the heir at law or the assignee of such purchaser.

Ninth. That the sale was conducted in the manner required by law.

Name of grantee to be entered.

SEC. 1749. When any tax deed is filed for record the county clerk shall also enter the name of the grantee in the proper column of his record of land sold for taxes.

SEC. 1750. No action for the recovery of land sold for taxes shall lie, unless the same be brought within five years after the sale thereof, for taxes, as aforesaid, any law to the contrary notwithstanding. *Provided*, *always*, That when the owners of such land sold as aforesaid shall, at the time of such sale, be minor or minors, or insane or an idiot, and residing within the United States one year after such disability is removed, it shall be lawful for such person or persons, their heirs or legal representatives, to bring their suit or action for the recovery of the lands so sold, and when the recovery is effected, in all cases the value of the improvements made on the lands so sold and all taxes paid after the sale thereof, with interest thereon as provided by this act, shall be ascertained by the jury trying the action for recovery, and paid by the person or persons recovering the same, before he, she or they shall obtain possession of the land so recovered.

Limitation of action for recovery of property sold at tax sale.

SEC. 1751. Real property sold under the provisions of this act may be redeemed by the owner, his agent, assignee or attorney at any time before the expiration of three years from the date of sale, and at any time before the execution of the deed to the purchaser, his heirs or assigns, by the payment to the treasurer of the proper county, to be held by him subject to the order of the purchaser, of the amount for which the same was sold, with interest thereon at the rate of twenty-five per cent. per annum from the date of sale, and fifteen per cent. on the sum if redeemed after three months from the date of the sale thereof, and twenty-five per cent. if redeemed after three months and within one year from the date of the sale, and forty per cent. if redeemed after one year and within two years from the date of sale, and fifty per cent. if redeemed after two (2) years and within three (3) years, together with the amount of all taxes accruing on such real estate after the first sale, paid by the purchaser and endorsed on his certificate of purchase, with interest on the same at the rate of twenty-five per cent. per annum on such taxes paid subsequent to such sale, but if said subsequent taxes should be paid before the time, when unpaid taxes levied, for that year would become delinquent, interest shall only be computed from the time of their delinquency.

Redemption

SEC. 1752. Minors, insane persons or idiots, having an estate in or lien on lands sold for taxes, may redeem the same within two years after such disability shall cease; but in such case the right to redeem must be established in a suit for that purpose brought against the party holding the title under the sale.

Redemption by minor, etc.

Manner of making redemption.

SEC. 1753. The rights of any of the persons mentioned in the preceding section to redeem being established, in order to make such redemption of lands sold for taxes he or some person in his behalf shall pay the county treasurer the sum for which such lands were sold, and the cost of the tax deed and the recording of the same, with twenty-five per cent. on the same, with interest thereon from the date of such sale at the rate of twenty-five per cent. per annum, and all other taxes, costs and charges which shall remain unpaid on such land at the time of making such redemption, assessed thereon subsequent to the date of the assessment of the taxes for which the same was sold, and all other taxes assessed subsequent to the date last aforesaid, which shall have been paid by the person to whom said last lands were sold, or by any other person claiming under him, with interest thereon at the rate of twenty-five per cent. per annum, from the date of such payment, so far as such payments can be ascertained from the books and records in the office of such treasurer; and should the person to whom such lands were sold, or any other person claiming under him to have put on improvements necessary to enable him to farm or raise stock upon said land, the person redeeming said land shall pay for said improvements, to be appraised by three disinterested persons to be appointed by the board of county commissioners; *Provided*, That the improvements shall not exceed in value the sum of five hundred dollars to each eighty or one hundred and sixty acre lot, and for all the moneys so paid the treasurer shall give a certificate of redemption to the person making such payments. From the time of making the redemption hereinbefore provided, the deed given upon the sale shall be void as against such minor, idiot or insane person, and all persons claiming under him.

Quit claim.

SEC. 1754. Upon the delivery to the county clerk of a quit claim deed by the person to whom such land was sold, or those claiming under him, for the use of the person redeeming under the provisions of the preceding section, the county clerk shall draw his order on the treasurer in favor of such person quit claiming for the amount of such redemption money so paid in.

Order for redemption money.

SEC. 1755. The county clerk shall, on demand of any person entitled to redemption money in the hands of the treasurer, draw his order upon the treasurer in favor of such person, on his surrendering to him the tax certificate to such piece or parcel of land which has been so redeemed.

SEC. 1756. If there shall be a loss of such certificate, and the land therein described shall have been redeemed, the owner thereof may exhibit to the county clerk satisfactory evidence of such loss, and upon his executing a bond with sufficient surety that he will refund such redemption money with twenty-five per cent. per annum interest thereon, if any person shall thereafter show his right thereto, the county clerk shall draw his order on the treasurer in favor of the person so executing such bond for the amount of such redemption money.

Bond in case of lost certificate.

SEC. 1757. Any person who has or claims an interest in or lien upon any undivided estate in any piece or parcel of land sold for taxes, may redeem such undivided estate by paying into the treasury a proportionate part of the amount required to redeem the whole, and in such case the certificate of redemption shall express the estate or interest redeemed,

Redemption of undivided interest.

SEC. 1758. The county treasurer shall, upon the application of any party to redeem any real property sold under the provisions of this act, and upon the payment of the proper amount, issue to such party a certificate of redemption, describing the tract redeemed as in the certificate of sale, giving the date of redemption, the amount paid and by whom redeemed, and he shall make the proper entries in the book of sales in his office.

Certificate of redemption.

SEC. 1759. The person so redeeming any tract or tracts of land shall present his certificate of redemption to the county clerk, who shall enter the redemption in the proper columns in the record of land sold for taxes, and shall endorse the date of such entry on the certificate, and such certificate and the record thereof shall be *prima facie* evidence of the redemption of the lands therein described.

Clerk to make entry of redemption.

SEC. 1760. County clerks shall be entitled to a fee of ten cents for each certificate of redemption entered upon their respective records, as provided in the preceding section, to be paid by the person making such redemption.

Fee of clerks.

SEC. 1761. Any person, except county clerks, county treasurers, and each of their deputies or clerks, may become the purchaser at such sale. If the owner purchase, the sale shall have the effect to pass to him (subject to redemption as herein provided) every right, title and interest of any and every person, company or corporation free from any claim, lien or encumbrance, except such right, title, interest, lien or en-

Who may become purchasers.

cumbrance as the owner so purchasing may be legally or equitably bound to protect against such sale, or the taxes for which such sale was made; and no such sale of real estate for taxes shall be considered invalid on account of the same having been charged in any other name than that of the rightful owner: *Provided*, That nothing herein contained shall be so construed as to prevent any such officer or his deputy or clerk from becoming the purchaser at such sale of any lands of which he may be the owner, or upon which he may have a lien: *Provided*, That no county auditor, county treasurer, their deputies or clerks shall act as agent or attorney for the purchasers at such sale.

Proceedings in case of judgment declaring a sale void.

SEC. 1762. When a sale of lands, as provided in this act, is declared void by judgment of court, the judgment declaring it void shall state for what reason such sale is declared void. In all cases where any sale has been or hereafter shall be so declared void, the money paid by the purchaser at the sale or by the assignee of the county, upon taking the assignment, shall, with interest at the rate of ten per cent, per annum from the date of such payment, be returned to the purchaser or assignee or the party holding his right, out of the county treasury on the order of the county clerk; and so much of said money as has been paid into the territorial treasury shall be charged to the territory by the county clerk, and deducted from the next money due the territory on account of taxes *Provided*, That if such purchaser or assignee, or party holding his right, shall, after such purchase or assignment from the county, have paid taxes, penalties or interest upon such piece or parcel of land, he shall have a lien on such piece or parcel for the amount of such taxes, penalties and interest so paid, with interest thereon from the time of payment thereof, at the rate in this section provided, and may enforce such lien by action, or if he be in possession of such piece or parcel, shall not be ejected therefrom until such amount and interest shall be paid.

Recovery of tax paid by tenant, etc.

SEC. 1763. When any tax on any real estate is paid by or collected of any occupant or tenant or any other person, which by agreement or otherwise, ought to have been paid by the owner, lessor or other person in interest, such occupant, tenant or other person may recover by action the amount which such owner, lessor, or party in interest ought to have paid, with interest thereon at the rate of fifteen per cent. per annum or he may retain the same from any rent due or accruing from him to such owner or lessor for real estate on which such tax is so paid and the same shall until paid constitute a lien upon such real estate.

Lienholder may pay tax.

SEC. 1764. Any person who has a lien by mortgage or otherwise upon any real propety on which the taxes have not been paid may pay such taxes and the interest, penalty and costs thereon; and the receipt of the county treasurer shall constitute an additional lien on such land to the amount therein stated; and the amount so paid and the interest thereon at the rate specified in the mortgage or other instrument, shall be collectable with as a part of, and in the same manner as the amount secured by the original lien.

Duty of clerk in case of transfer.

SEC. 1765. When any deeds, plat of any town site, or instrument affecting the same or any other conveyance of real estate is presented to the county clerk for transfer, he shall ascertain from the books and records in his office or the office of the treasurer if there be delinquent taxes due upon the land described therein, or if it has been sold for taxes, and if there are delinquent taxes due he shall certify to the same and upon the payment of such delinquent or other taxes that may be in the hands of the county treasurer for collection, he shall transfer the same and note upon every deed of real property so transferred, over his official signature "taxes paid and transfer entered;" or if the land described has been sold or assigned to an actual purchaser for taxes "paid by sale of land described within" and unless such statement is made upon such deed or other instrument, the recorder shall refuse to file a record of the same. A violation of the provisions of this section by the recorder shall be deemed a misdemeanor, and upon conviction thereof he shall be punished by a fine not less than one hundred dollars, nor exceeding one thousand dollars, and he shall be liable to the grantee of any instrument so recorded for the amount of any damages sustained; *Provided*, That sheriff's or referee's certificate of sales on execution decrees or foreclosure of mortgages, may be recorded by the register of deeds without any such certificate from the county clerk.

Advertising delinquent tax list

SEC. 1766. The county commissioners shall let the advertising of the delinquent tax list to the publisher or proprietor of a newspaper who will offer to do the same in some daily or weekly newspaper, having not less than four pages of five columns to the page, each column to be not less than two inches in width nor less than seventeen inches in length, printed in the English language, and of general circulation, which shall have been published and circulated for at least one year prior to the time of letting, for the lowest sum, not to exceed twenty-five cents for each description, and who shall give a bond to the county, with at least two sureties, freeholders of the county, to be approved and in an amount to be fixed by the county commissioners, conditioned for the correct and faithful performance of such advertising.

Printer liable for error

SEC. 1767. In all cases where there is an error in the advertised lists, the fault thereof being the printer's, which prevents the sale of any tracts or lots, or of all of said delinquent lists, at the time stated in the advertisement, the printer shall lose the compensation allowed by this act, for such erroneously advertised tracts or lots, or entire lists; as the case may be.

Duty of clerk in case of false assessment.

SEC. 1768. The county clerk, if he has reason to believe or is informed that any person has given to the assessor a false statement of his personal property, or that the assessor has not returned the full amount of all the property required to be listed in his county, or has omitted or made an erroneus return of any property which is by law subject to taxation shall proceed at any time before the final settlement with the county treasurer to correct the return of the assessor, and to charge the owners of said propety on the tax lists with the proper amount of taxes; to enable him to do which he is hereby authorized and empowered to issue compulsory process, and to require the attendance of any person whom he may suppose to have a knowledge of the articles or value of the property, and to examine such person on oath in relation to such statement or return, and the county clerk in all such cases shall notify every such person before making the entry on the tax list, that he may have an opportunity of showing that his statement, or the return of the assessor is correct; and the county clerk shall in all cases, file in his office a statement of the facts upon which he made such corrections; but he shall in no case reduce the amount returned by the assessor without the written consent of the territorial auditor, on a statement of the case submitted by the county clerk or the party aggrieved.

Unpaid taxes to be added to assessment.

SEC. 1769. If any tax on any property liable to taxation is prevented from being collected or is omitted for any year or years by reason of any erroneous proceedings or other cause, the amount of such tax which such property should have paid shall be added to the tax on such property for the next succeeding year, but it must be entered and taxed separately for each year.

Penalty for violation.

SEC. 1770. Any officer who shall wilfully neglect or refuse to perform any of the duties imposed upon him by this act, except as otherwise prescribed, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine or imprisonment, the fine not to exceed one thousand dollars nor the imprisonment one year.

Evidence.

SEC. 1771. The entries made in the county treasurer's books, the assessment rolls and the warrants thereto attached, and the lists of lands sold for taxes recorded by said treasurer or by the county clerk, or a certified copy thereof, shall be *prima facie* evidence in all judicial proceedings and in all courts in this territory.

Who may administer oath

SEC. 1772. When any fact, matter or thing is required by this act to be verified by oath or affirmation, any assessor, treasurer or county clerk may administer the same.

Duty of clerk as to property sold.

SEC. 1773. The county clerk, when making up the tax books of the county, and before said book is placed in the hands of the county treasurer for collection of the taxes therein, shall designate each piece or parcel of real estate sold for taxes, and not redeemed, by writing in a plain manner opposite to such piece the word "sold;" and the county treasurer shall, when any person offers to pay taxes on any real estate marked "sold," notify such person that such property has been sold for taxes, and inform him for what taxes said property was sold and at what time said sale was effected.

Auditor to prescribe forms

SEC. 1774. In order to secure uniformity of proceedings and returns throughout the territory, the territorial auditor shall prescribe the form of all books and blanks required under the provisions of this act.

Responsibility of county for tax.

SEC. 1775. Each county is responsible to the territory for the full amount of tax levied for territorial purposes, excepting such amounts as are certified to be uncollectable, double or erroneous assessments.

Settlements.

SEC. 1776. On the first day of December, March, June and September, respectively, the county treasurer shall make full settlement with the county commissioners of his receipts and collections for all purposes from the date of the last settlement up to each day mentioned, and the county clerk shall immediately after such settlements are made, make out a statement upon blanks, to be provided by the territorial auditor for that purpose, showing the exact state of the territorial revenue in his county, the balance due the territory, and of all credits due the county by reason of the double or erroneous assessments, and amounts refunded to purchasers of real estate erroneously sold for taxes. Said statement shall be authenticated by the county seal and the signature of the county clerk, and shall be made out in duplicate, one of which the county clerk shall preserve in his office, the other he shall immediately transmit to the territorial auditor.

Taxes to what use deemed appropriated.

SEC. 1777. All county taxes levied under the provisions of this act shall be deemed to be specially appropriated for the proper use of the fund for which said tax was so levied. Transfer from one fund to another fund is hereby prohibited. Any county clerk or treasurer making transfers contrary to the provisions of this section shall be punished upon conviction thereof in a sum not exceeding one hundred dollars.

Cash book to be kept by treasurer.

SEC. 1778. The county treasurer is hereby required to keep a cash book, in which he shall each day enter an account of all money by him received, specifying in proper column provided for that purpose the date of the payment, the number of the receipt issued therefor, by whom paid, and on account of what fund or funds the same was paid, whether territorial, county, school, sinking fund, or otherwise, each in a separate column, and the treasurer shall keep his account of money received for, and on account of taxes, separate and distinct from moneys received on any other account, and shall also keep his account of money received for and on account of taxes levied for any one year, separate and distinct from those levied for any other year, and all entries in said cash book of money received for taxes shall be in the numerical order of the receipts issued therefor.

Duplicate receipts.

SEC. 1779. Whenever the treasurer receives money, warrants, or orders on account of licenses, fines, or any other account except taxes, he shall make duplicate receipts for the same, and deliver one to the person making such payment, and the other to the county clerk, and forthwith enter the same in his cash book as in case of money received for taxes.

Entries on cash book.

SEC. 1780. The treasurer shall each day enter on the credit side of his cash book all warrants or orders paid, giving the date of payment, the number of the order or warrant, in whose favor drawn, and on what fund chargeable, each fund in a separate column. After making all such entries as are prescribed in the two preceding sections, the treasurer shall furnish to the county clerk a statement of his receipts and expenditures or such data as shall enable said clerk to make and keep a cash book, which shall be in manner and form a duplicate of the treasurer's cash book.

Railroad corporations to furnish lists of lands

SEC. 1781. On or before the first day of September in each year, each and every railroad corporation that has grants of lands from the United States to aid in the construction of its line of railroad, shall make a return to the territorial auditor of full and complete lists of lands sold or contracted to be sold in each county in which said lands may be situate during the year, ending the last day of December next preceding, the correctness of which list shall be verified by the land commissioner or other proper officer of the railroad corporation. Thereupon the territorial auditor shall certify to each county clerk a list of such lands as are situate in his county, to be placed upon the real estate assessment roll for taxation, in the name of the parties who may have purchased such land.

Lists of lands to be procured from land office

SEC. 1782. The county clerks of the several counties shall, on or before the first day of January in each year, procure from the United States land office of the district in which the county may be situate, a list of lands upon which final proof has been made during the year next preceding the last of December, and enter the same upon the real estate assessment roll for taxation. For such list the county commissioners shall allow said land officers a reasonable compensation.

How treasurer to be charged and credited

SEC. 1783. Upon the delivery of the tax list to the treasurer, the county clerk shall charge him with the total amount of taxes levied on said tax list, and shall credit the treasurer after each settlement with the amount shown to have been collected on said tax list, and shall from time to time credit him with such amounts of double or erroneous assessments as the county commissioners may order abated.

Additional assessments

SEC. 1784. The county clerk shall keep a list of additional assessments, charging the treasurer with the amount thereof, as provided in the preceding section, and in his statement to the territorial auditor shall give the amount of territorial taxes so levied thereon.

Taxes due city etc. to be paid over

SEC. 1785. The county treasurer shall immediatdly after each settlement in December, March June and September, pay over to the territorial treasurer, or of any municipal corporation, or other body politic, on the order of the proper officers, all moneys received by him arising from taxes levied and collected, belonging to the territory, or to such municipal corporation, and deliver up all orders and other evidence of indebtedness of such municipal corporation or other body politic, taking duplicate receipts therefor, one of which shall be filed in the office of the county clerk.

Duty of retiring treasurer.

SEC. 1786. When a county treasurer goes out of office, he shall make a full and complete settlement with the board of county comissioners, and deliver up in the presence of the county clerk, all books, papers, money, and all other property appertaining to the office, to his successor, taking his receipt therefor. The county commissioners shall see that the balance of taxes as charged against the treasurer are equaled and represented by the unpaid taxes as shown on the tax lists. They shall also see that the books of the treasurer are correctly balanced before passing into the possession and control of the treasurer elect.

Special poor tax.

SEC. 1787. In addition to the tax required to be levied by the provisions of this act, there shall be levied by the board of county commissioners of each county, at the same time the advalorem tax is levied by them, a tax of two dollars, to be denominated a special poor tax, upon each male inhabitant of this territory over the age of twenty-one years, which tax shall be entered upon the tax book by the county clerk, and collected by the county treasurer from the advalorem tax payers as other taxes, and shall be placed to the credit of the poor fund of the county: and the several county assessors shall collect said special poor tax from such persons as pay no property tax, and settle therefor with the several treasurers and the county commissioners, as now provided in "An act to provide for the collection of special poor tax of persons who pay no property tax," approved February 15th, 1883, and in "An act to amend sections 455 and 1021 of the fifth division of the revised statutes of Montana," approved March 12, 1885.

NOTE.—For act of February 15, 1883, mentioned in foregoing section see sections 908, 909 and 910 of this division, for section 455, revised statutes, see section 907 of this division, and for section 1021 of the revised statutes see section 1790 of this division.

Preparation of records.

SEC. 1788. For the purpose of preparing the records provided for in this act, the county commissioners of the several counties in this territory are authorized and required to employ such additional assistance to the county clerk as may be necessary therefor, and to pay for the same not exceeding one hundred dollars per month while actually engaged thereon, out of the contingent fund of their respective counties.

Laws repealed

SEC. 1789. Chapter 53 of the revised statutes of Montana, relating to revenue, and all acts amendatory thereof, are repealed from and after December 1, 1887: *Provided, however*, That so much of said acts as shall be necessary to carry out, consummate or perfect any proceedings relative to real estate heretofore sold for taxes or to be sold for taxes until December 1, 1887, shall continue in force for that purpose and no other: *And provided further*, That all assessments and levies of taxes heretofore made, or to be made until December 1, 1887, where the taxes have not been collected when this act goes into effect, shall be considered as assessments and levies made under the provisions of this act, and are hereby legalized and made lawful in all respects and for all purposes; and all further proceedings for the collection of taxes so levied, or for the sale of real estate so assessed for taxes, shall be made under the provisions of this act from and after December 1, 1887.

NOTE.—Section 1665 to 1789, both inclusive, are in their order respectively sections 1 to 125, both inclusive, and comprise all of "An Act relating to assessment and levy of taxes," approved March 10, 1887.

14th ses. p 105

Special poor tax

SEC. 1790. In addition to the tax required to be levied by the provisions of this chapter there shall be levied by the board of county commissioners of each county, at the same time the *ad valorem* tax is levied by them, a tax of two dollars upon each male inhabitant of this territory over the age of twenty-one years. Such tax shall be denominated a "poor tax," and the money collected thereon shall be set apart by the board of county commissioners as a fund exclusively for the support and maintenance of the poor of each county. It shall be the duty of the assessors of the several districts to collect the said poor tax in money, and in the manner provided for in this article for the collection of taxes, except that said taxes shall be collected and payable at any time after the same are levied. For the purpose of collecting said poor taxes, it shall be the duty of the board of commissioners of each county to provide blank printed receipts for such poor tax, which shall have proper stubs, with memorandum of names, amount and date attached; and such blank receipts, or so many as may be necessary, shall be delivered by the clerk of said board of commissioners to the several assessors at the same time when the blank assessment lists are furnished to them; and each assessor shall receipt to the clerk for the number of blanks of poor tax receipts respectively received by him. The assessor shall give the proper receipt for each poor tax collected by him and make the proper memorandum on the corresponding stub; and he shall on the first Monday in each month pay over to the county treasurer all moneys collected by him during the preceding month and take the treasurer's receipt therefor, and return to the board of commissioners at each of their regular sessions, or at any other time when required by the board, all stubs of receipts given, all blank receipts still on hand and the receipts of the treasurer for the money paid him; and the board shall compare the number of blanks received by such assessor with his stubs and blanks on hand, and ascertain if they tally, and also if the money collected has been paid to the county treasurer; and if the same be found correct, the assessor shall deliver up his remaining blank receipts, and therefor the clerk shall give the assessor, on the order of the board, a certificate of such settlement of such assessor with the board. The assessor shall be liable on his official bond for the non-performance of his duties in collecting said poor tax, and for the money collected therefor by him; and the board of county commissioners shall have power, if they deem it necessary, to require any assessor to give additional bond for performing his duties and paying over money collected on said poor tax in such sums as they shall designate.

NOTE —Section 1790 act of March 12, 1885.

TAXATION OF MINES.

Miners required to furnish statement of gross yield of metals, and of expenditures.

SEC. 1791. Every person, corporation or association engaged in mining upon any quartz vein or lode, or placer mining claim, containing gold, silver, copper or lead, is hereby required between the first and tenth days of August in each year, to make out a statement of the gross yield of the above named metals from each of such mine or mines being owned or worked by such person, corporation or association during the year next preceding the first day of August in each year, and the value thereof, which said statement shall be verified by the oath of such person, or the superintendent or managing agent of such corporation or association, and deliver the same to the assessor of the county in which such mine or mines are situated, between the dates above mentioned. That said statement, verified as above provided, shall also contain a true and correct account of the actual expenditures of money and labor in and about extracting such ore, the reduction thereof and the conversion of the bullion derived therefrom into money or its equivalent during such year.

What expenditures may be included in statement.

SEC. 1792. That in making the statement of the expenditures mentioned in the foregoing section, such person, corporation or association shall be allowed to include therein all sums of money that have been expended for necessary labor, machinery, supplies of every kind and character needed and used in his or its mining operations, for improvements actually necessary in and about the working of such mine or mines, reducing the ores therefrom, and expended in and about the construction of mills or reduction works used and operated in connection with said mine or mines, for the purpose of reducing and extracting the precious metals therefrom, and shall not include any money invested in said mines or improvements made on the same during any year except the year immediately preceding such statement: *Provided*, That nothing herein contained shall exempt such improvements, mills, reduction works and supplies from taxation as now provided by law: *Provided*, That the expenditures referred to herein shall not include the salaries, or any portion thereof, of the officers of any corporation not actually engaged in the working of such mine or mines, or personally superintending the management thereof.

Net proceeds to be taxed

SEC. 1793. That a tax shall be levied annually upon the net proceeds of all mines above named, such net proceeds to be ascertained and determined in the manner provided in the foregoing sections of this article, and that such tax shall be collected and the payment thereof enforced as now provided by law for the collection of other taxes.

Penalty for failure to furnish statement.

SEC. 1794. That if any person, corporation or association engaged in the kind of mining named in this article, shall refuse or neglect to make and deliver to the assessor of the county where his or their mines are situated, the statement mentioned in sections 1791 and 1792 of this chapter, during the time herein specified, the assessor of such county is hereby authorized and empowered, and it is hereby made his duty, to proceed to fix and assess, according to his best knowledge and information, the amount upon which the tax mentioned in section 1793, of this chapter, shall be levied, in the manner now provided by law relating to the assessment of other property, and shall add a like penalty of twenty per centum to the amount and value thereof.

Mining claim to be assessed at government price.

SEC. 1795. That from and after the passage of this chapter, no direct tax shall be levied upon any placer claim, quartz lead, or lode, except to the extent of the price paid for any mining claim in obtaining patent therefor from the government of the United States, and the only taxation of the proceeds thereof shall be that provided in this chapter: *Provided*, That this chapter shall not be so construed as to exempt from taxation improvements consisting of buildings, erections, or machinery, placed upon any quartz lead or lode, or used in connection therewith: *Provided further*, That the assessor shall at the time of assessing any person, firm, corporation or association, have the power to examine the books and accounts of said person, firm, corporation or asssociation, to fully satisfy said assessor that he has been furnished with a truthful report; and if satisfied from such examination that the report is false, he shall assess the same as the true amount of the net proceeds, so near as he can arrive at the same: *Provided*, That no one, by virtue of the provisions of this chapter, shall be deprived of his right to appear before the proper board of equalization as other tax payers under existing laws.

CHAPTER CI.

ROADS AND HIGHWAYS.

Sec. 1796. Levy of road tax and special road tax.
Sec. 1797. Duty of road supervisor as to road tax.
Sec. 1798. Penalty for failure to work on road.
Sec. 1799. Receipts to be given for road tax; penalty.
Sec. 1800. Supervisor to open road and keep same in repair.
Sec. 1801. Drains, ditches, etc., for protection of roads.
Sec. 1802. Removal of obstructions from road.
Sec. 1803. Certificates for extra labor.
Sec. 1804. Presumption as to real estate.
Sec. 1805. Inspection of road and work.
Sec. 1806. Record of roads.
Sec. 1807. Contracts for road work.
Sec. 1808. Apportionment of road fund.
Sec. 1809. Notice of petition for laying out and changing roads.
Sec. 1810. Appointment of viewers.
Sec. 1811. Warrant to viewers.

Sec. 1812. Service of warrant and oath of viewers.
Sec. 1813. Duties of viewers.
Sec. 1814. Majority of viewers may act; vacancy.
Sec. 1815. Report of viewers.
Sec. 1816. Consideration of report.
Sec. 1817. Record of report.
Sec. 1818. Opening of road.
Sec. 1819. Payment of damages.
Sec. 1820. Agreement as to damages.
Sec. 1821. Appeal from award of damages.
Sec. 1822. Width of highway.
Sec. 1823. Proceedings in case all the owners petition.
Sec. 1824. Private roads.
Sec. 1825. Certified copy of order.
Sec. 1826. Penalty for obstructing highway.
Sec. 1827. Penalty for damaging abutments of bridge.
Sec. 1828. Penalty for obstructing highway by ditch, etc.
Sec. 1829. Disposition of fines.
Sec. 1830. Duty of county attorney.
Sec. 1831. Appointment; bonds and fees of supervisors.
Sec. 1832. Repeal.
Sec. 1833. Supervisor may employ laborers, etc.
Sec. 1834. Payment of claims, etc.
Sec. 1835. Penalty for issuing false certificates.
Sec. 1836. Penalty for failure of supervisor to perform duty.
Sec. 1837. Proceeding if person has no taxable property.
Sec. 1838. Employer to give list of employes.
Sec. 1839. Duty of assessor.
Sec. 1840. Contracts for bridges to be let to lowest bidder.
Sec. 1841. Advertisement for bids.
Sec. 1842. Apportionment of road fund.
Sec. 1843. Temporary obstructions.
Sec. 1844. Contracts to lowest bidder.
Sec. 1845. Bids for keeping roads in repair.
Sec. 1846. Bids; how made.
Sec. 1847. Bids; when opened.
Sec. 1848. Bond of contractor.
Sec. 1849. Inspection of roads by supervisors.
Sec. 1850. Contract for new road.

Sec. 1851. Payments to contractors.
Sec. 1852. Street tax in cities.
Sec. 1853. Tax may be worked out.
Sec. 1854. No road tax levied where street tax is collected.

Levy of road tax and special road tax.

SEC. 1796. There shall be levied and collected on all taxable property in the county the sum of not less than one mill nor more than two mills on the dollar for road purposes, also a special road tax of three dollars on each able-bodied man between the ages of twenty-one and forty-five years residing in each road district; *Provided*, That any person liable to pay special road tax may work out such tax under the direction of the supervisor of the district wherein such persons reside, and shall be allowed for such work the sum of three dollars per day. The several county treasurers are hereby authorized and empowered to collect all road tax, both special and *ad valorem*, levied in each year as required by law for the collection of revenue; *Provided*, That any person producing the supervisor's certificate for labor done and performed, or for material furnished on any road or bridge by order of said supervisor, shall be allowed the same as his special road tax.

Duty of road supervisor as to road tax.

SEC. 1797. The supervisor shall notify every person within his road district subject to road labor as aforesaid, to perform one day's work in each year upon the public roads, and if any person subject to road labor as aforesaid, shall, after three days' notice, either personally or by writing left at his usual place of abode by the supervisor or any other person under his direction, neglect or refuse to pay the said three dollars to the supervisor, attend by himself or suitable substitute at the time and place designated by the supervisor, or having attended, shall refuse to obey the directions of the supervisor, or shall pass his time in idleness or inattention to labor or duties assigned him, every such delinquent shall hereby become liable for the amount of his special road tax in money; and if such person has no real estate assessed in his name, it shall be the duty of the supervisor to make complaint before the probate judge, or some justice of the peace, setting forth the facts of such notice and refusal to perform the required labor or to pay the money, when, if such charge be sustained after a hearing, the delinquent shall be deemed guilty of a misdemeanor, and shall be fined not less than five nor more than ten dollars, together with all costs; such fines to be collected as in ordinary criminal actions, and to be paid into the county treasury for the use of the road fund in his district; if not paid, to be enforced by arrest and imprisonment at hard labor on any public roads at the rate of three dollars per day.

Penalty for failure to work on road

SEC. 1798. Every person notified to labor on the public roads under the provisions of this act shall be required to immediately pay said sum of three dollars ($3) to the supervisor or appear at the place appointed by the supervisor at the hour of 8 o'clock in the forenoon, with such necessary tools and implements as said supervisor may direct, and work industriously and diligently, doing at least eight hours' work faithfully in each day at such work and in such manner as shall be directed by the supervisor; and such supervisor may, if he deem necessary, procure from any resident of his district a team of horses, mules or oxen, and wagon, cart, scraper or plow, to be employed or used on the roads under the direction of such supervisor, and shall allow such person a reasonable compensation therefor, not to exceed five dollars per day for the use of such team, wagon, cart, scraper or plow and driver.

Receipts to be given for road tax

SEC. 1799. For the purpose of collecting said special road tax, it shall be the duty of the board of commissioners of each county to provide blank printed receipts for such special road tax, which shall have proper stubs, with memorandum of names, amount and date attached; and such blank receipts, so many as may be deemed necessary, shall be delivered by the clerk of the board of commissioners to the several road supervisors, and each road supervisor shall receipt to the clerk for the number of blanks of special road tax receipts respectively received by him. The road supervisor shall give the proper receipt for each special road tax collected by him and make the proper memorandum on the corresponding stub; and he shall, on the first Monday in each month, pay over to the county treasurer all moneys collected by him during the preceding month, and take the treasurer's receipt therefor, and return to the board of commissioners at each of their regular sessions, or at any other time required by the board, all stubs of receipts given, all blank receipts still on hand and the receipts of the treasurer for the money paid him; and the board shall compare the number of blanks received by such road supervisor, with his stubs and blanks on hand, and ascertain if they tally, and also if the money collected has been paid to the county treasurer; and if the same be found correct, the road supervisor shall deliver up his remaining blank receipts, and therefor the clerk shall give the road supervisor, on the order of the board, a certificate of such settlement of such road supervisor with the board. The road supervisor shall be liable on his official bond for the non-performance of his duties in collecting said special road tax and for the money collected thereof by him, and the board of county commissioners shall have power, if they deem it necessary, to require any road supervisor to give additional bonds for performing his duties and paying over money collected on said special road tax in such sums as they shall designate, and all special road tax so collected in money shall be paid into the county treasury to the credit of the road fund of the road district in which the sum is collected; and the road supervisor of the respective road districts shall make out quarterly, or when required by the county commissioners at any other time or times, a true and correct statement of the number of days work performed by him in accordance with the provisions of this act, duly sworn to and filed with the county clerk, and if found correct by the board of commissioners, they shall pay the same by warrant drawn on the road fund of the respective road districts.

Penalty for failure of duty.

Supervisor to open roads and keep same in repair.

SEC. 1800. The supervisor of roads shall open, or cause to be opened when ordered by the county commissioners, all public roads which shall have been or may hereafter be laid out and established according to law in any part of his road district, and shall keep the same in good repair, and if such labor is not sufficient, the board of commissioners are hereby authorized, at their discretion, to appropriate from the general road fund any amount they may see fit for the use and benefit of such district.

Drains, ditches, etc., for protection of roads.

SEC. 1801. The road supervisor shall have authority to open or construct drains and ditches as he may deem necessary for the making and preserving of such roads, doing as little injury as may be to the adjoining lands, and any person stopping or obstructing the drains or ditches so made shall forfeit the sum of twenty dollars, to be recovered by the supervisor in a civil action in any court of competent jurisdiction. If any person shall feel aggrieved by the act of any supervisor, he may make complaint in writing to the county commissioners, who shall allow just damages and pay the same out of the road fund. The supervisors may under the directions of the county commissioners, purchase any plows, scrapers or other instruments necessary for the use of the road district, and pay for the same out of the road fund of said district. Such supervisor shall carefully preserve such tools and instruments and shall allow the same to be used only on public road work.

Removal of obstructions from roads.

SEC. 1802. If at any time during the year any public road shall become obstructed by snow, or from any other cause, or any bridge shall need repairing or become dangerous for the passage of teams or travelers, the supervisors of the road district upon being notified thereof shall forthwith cause such obstruction to be removed or bridge repaired, for which purpose he shall immediately order out such number of inhabitants of his district as he may deem necessary to remove such obstruction or repair such bridge; and all persons so ordered out shall, after having received notice, be subject to the same restrictions and liable to the same penalties as if ordered out under section 1797 of this act.

Certificates for extra labor.

SEC. 1803. In all cases when any person has performed labor on the public roads in removing obstructions or repairing bridges, as required in section 1802, the supervisor shall give such person a certificate specifying the amount of extra labor so performed, which certificate may be transferred and received in discharge of the labor of any other person within the same district to the amount of labor specified in such certificate, or may be received from the holder in satisfaction of labor on the roads in such district at any subsequent year for the amount of labor specified therein, or may be presented to the board of county commissioners and allowed by them as are other bills presented against the county.

Presumption as to real estate.

SEC. 1804. In an action by the supervisor against any person for failure to comply with the provisions of this act the presumption shall be that the delinquent had no real property listed to him during the current year. No property is exempt from execution and sale for a delinquent road tax.

Inspection of roads and work.

SEC. 1805. The board of county commissioners may by order, when they deem it expedient, direct any member of said board to inspect the condition of any road in their county, and all work done thereon before payment therefor, and shall receive for the time actually and necessarily employed in such service the sum of eight dollars per day, to be audited and allowed the same [as] *per diem* allowed the commissioners attending the regular meetings of such board, he amount so allowed to be in full payment for mileage and *per diem* while engaged in the service provided for by this section, and such commissioners shall, at next meeting of the board, file a written report of such inspection.

Record of roads.

SEC. 1806. The county commissioners of the several counties shall provide a suitable book and have recorded therein a description showing the date of laying out, the width, length and termini of all county roads now or hereafter established in their county.

Contracts for road work.

SEC. 1807. Nothing in this act shall be so construed as to prevent any board of county commissioners from making and awarding contracts for the grading or repairing of roads, the construction or repairing of bridges on county roads at any time when in their judgment such work can be done cheaper and better than by a supervisor. Nor shall anything in this act be so construed as to interfere with the collection and disbursement of any road tax within any incorporated town or city where by law a road tax is collected.

Apportionment of road fund.

SEC. 1808. The board of county commissioners shall, at their regular meeting in March, after having reserved a sum sufficient to pay all outstanding indebtedness and such further sums as in their judgment may be needed for special purposes, from the general road fund, apportion the remainder among the several road districts of their county, equitably, having reference to the condition of the highways in the several districts.

Notice of petition for laying out or changing road

SEC. 1809. When any petition shall be presented for the action of the county commissioners for the laying out, alteration or vacation of any county road, it shall be accompanied by satisfactory proof that notice has been given by advertisement posted on the front door of the county clerk's office, and in three public places in the vicinity of said road or proposed road thirty days previous to the presentation of said petition to the county commissioners; proof of the posting of said notices, giving time and place, shall be made by affidavit, which shall be filed with said petition.

Appointment of viewers

SEC. 1810. It shall be the duty of the board of county commissioners of any county in this territory to appoint a board consisting of three householders of the county to view and mark out the road prayed for in the petition, and to fix a time for such view, and to cause notices to be posted in three of the most public places along the proposed new road, at least five days previous to the day fixed for the view thereof, giving parties in interest notice that at the time fixed by the board of county commissioners the viewers so appointed will meet at the point designated in the petition as the starting point of such road, to attend to their duties as viewers. Proof of such notice shall be made by affidavit and filed in the office of the county clerk.

Warrant to viewers.

SEC. 1811. The county clerk shall issue a warrant directed to the viewers appointed, setting forth their appointment and requiring them to meet at the time and place named by the board of county commissioners, and to proceed to view and mark out such road, to assess the damages and benefit accruing to the owner or owners of any of the lands over which the same may pass by reason of the alteration, widening, changing or location thereof and the probable cost of opening such road for travel.

Service of warrant and oath of viewers.

SEC. 1812. The sheriff, constable, or any other person of the proper county, shall serve the warrants mentioned in the preceding section by delivering a copy to each of the viewers named therein, and the original shall be returned to the county clerk with the endorsement of service thereon. Any person appointed road viewer shall be required to take an oath or affirmation faithfully and impartially to discharge the duties as reviewer of the road recited in the petition according to law: *Provided*, That in all cases where an oath or affiirmation is required to be taken under the provisions of this article the same may be administered by one of the viewers who has been previously sworn.

Duties of viewers

SEC. 1813. The viewers appointed and served with warrant as herein provided shall meet at the time and place specified in the warrant, and commencing at the place designated in said petition as the starting point of the road sought to be altered, widened, changed or laid out and established, the said viewers shall proceed to view and mark out the same by setting stakes, blazing trees, turning a furrow, or other appropriate monuments to the terminus named in the petition by the most practicable and convenient route that they in their judgment can find. They shall assess the benefits and damages accruing to all persons by reason of the alteration, widening, changing or laying out of said road, and award to any person or persons damages in excess of the benefits accruing to him or them a sum equal to such excess, and if the viewers or a majority of them be of opinion that the road should be altered, widened, changed or laid out and established, they shall cause a survey and plat of the same to be made by the county surveyor or other competent person, giving the courses and distances and specifying the land over which the road passes, and all new roads hereafter opened shall in all cases, when it is practicable, be laid out on subdivisional or section lines, and it shall be the duty of all county commissioners when it is practicable, without working a hardship upon any settler, on petition of a majority of settlers residing upon said road, to change all roads to conform to the provisions of this section.

Majority of viewers may act; vacancy.

SEC. 1814. If any viewer duly appointed and served with warrant refuse to act, or is disqualified and does not appear, the other two viewers may fill such vacancy; or if but one of the viewers appears who is qualified and consents to act, he shall appoint two others, who shall be householders, to assist him, and they shall proceed to view such road.

Report of viewers.

SEC. 1815. The viewers shall file a report of the view in the office of the county clerk of the county in which such view was made, ten days before the next regular meeting of the board of county commissioners held after the same is completed, which shall be signed by a majority of the viewers, and shall contain a full statement of their proceedings, a description of the land over which such road extends, an estimate of the cost of opening it for travel, and assessment of the damages and benefits accorded to any person or persons by reason of the alteration, widening, changing or laying out of such road, and the sum awarded any person or persons for damages in excess of the benefits assessed to him or them, and whether such road be practicable and the establishment of it be recommended by them. To this report the viewers shall annex the plat, survey and report of the surveyor, provided a survey is ordered. For their services the viewers shall receive a warrant on the county treasurer for a sum to be fixed by the county commissioners not exceeding five dollars per day,

Consideration of report.

SEC. 1816. The board of county commissioners at their next regular meeting after the return of such report shall proceed to consider the same and all objections that may be made thereto, and they shall determine whether or not such road shall be established and opened for travel. And they may refer the matter to the same or other viewers with instructions to report in like manner as herein required, or specially upon some particular matter.

Record of report

SEC. 1817. If the board of county commissioners determine to open any such road they shall cause the full and final report of the viewers, including the plat and report of the surveyor, if any survey was ordered, to be recorded in the office of the county clerk and recorder in the book kept for that purpose.

Opening of road

SEC. 1818. The board of county commissioners having considered the report of any road view and the compensation to which any person or persons damaged [is entitled] having been ascertained and paid to the owner or owners or into court for him or them, may order the road to be opened for travel. And if they do so order they shall cause notices to be posted at three public places along the line of said road, giving all parties notice that they have or will direct their proper officers to open and work the same from and after sixty days from the date of such notice: *Provided*, That no such road shall be ordered opened through fields of growing crops, or along a line where growing crops would thereby be exposed to stock, until the owner or owners of such crops shall have sufficient time to harvest and care for the same.

Payment of damages.

SEC. 1819. If the damages assessed to any person or persons by reason of the alteration, widening, changing, or laying out of any such road shall exceed the benefits, the excess shall be paid to such person or persons by warrant on the county treasurer for the amount. If any person or persons to whom damages are awarded be under disability, or cannot be found, the same shall be set apart to such person or persons in the county treasury: *Provided*, That if in the opinion of the county commissioners such proposed road is not of sufficient importance to the public to cause damages to be paid by the county they shall refuse to establish the same as a public highway, unless the expense and damages, or such part thereof as they deem proper, shall be paid in advance by the petitioners.

Agreement as to damages.

SEC. 1820. If any person or persons be of opinion that the damages awarded him or them by the viewers are inadequate or insufficient, the board of county commissioners may agree with such person or persons upon the measure of the same.

Appeal from award of damages.

SEC. 1821. Any person or persons owning or having an interest in any land over which any proposed road extends, who shall be of opinion that the damages awarded him or them by the road viewers are inadequate and insufficient, may, personally or by agent or attorney, on or before the first day of the regular meeting of the board of county commissioners, held after the report is filed in the office of the county clerk of the county in which the view was made, file a written request addressed to the board of county commissioners for a way to ascertain the compensation which he or they may be entitled to by reason of damages sustained by altering, widening, changing or laying out such road: *Provided*, That either the board of county commissioners or said person or persons may appeal from such decision to the district court: *And provided further*, That if the jury award no greater damages than theretofore awarded, such person shall pay all costs of such proceedings.

Width of highway.

SEC. 1822. All public highways hereafter laid out in this territory shall be sixty feet in width unless otherwise ordered by the board of county commissioners.

Proceeding in case all the owners petition.

SEC. 1823. Whenever a petition shall be presented to the board of county commissioners of any county of this territory praying for a public highway, and the names of all the owners of all the land through which said road is to be laid out, shall be signed thereat, giving the right of way through the lands, and accompanied by a plat of the road, it shall be the duty of the county commissioners, if in their opinion the public good requires it, to declare the same a public highway, and thereupon the plat shall be filed and recorded, and the same shall become a public highway from and after that date.

Private roads.

SEC. 1824. The manner of laying out any private wagon road from the dwelling of any person, or from any mill, timber, watering place, or any other place to which access is needed for public or private use, to any public road, and of condemning the lands necessary therefor, shall be the same as hereinbefore provided, excepting that the viewers of the same shall only receive compensation for one day's services, and the petition in such cases need be signed only by such person, and the expense of viewing and surveying such road and damages which may accrue to any person by reason of laying out the same, and the expense of opening the same, shall be paid by such petitioner.

Certified copy of order.

SEC. 1825. When any highway is to be altered, widened, changed or laid out, the county clerk shall notify the supervisor of the proper district and furnish him with a certified copy of the order of the board of commissioners.

Penalty for obstructing highway.

SEC. 1826. No person or persons shall erect any fence, house, or other structure, or dig pits or holes in or upon any highway, or place thereon any stones, timber, trees, rubbish or debris, or any obstruction whatever; and no person or persons shall tear down or otherwise damage any bridge of any highway, or, cause waste water, or the water from any ditch, road, drain or flume, to flow into or upon any road or highway so as to damage the same. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined not less than five nor more than one hundred dollars, together with the costs of prosecution.

Penalty for damaging abutments, etc., of bridge.

SEC. 1827. No person or persons, corporation or company, shall dam the waters of any stream so as to cause the same to overflow any road, or damage or weaken the abutments, wall or embankments of any bridge of any highways. Any person or persons, corporation or company, violating any of the provisions of this section shall forfeit the sum of fifty dollars to the county, and shall be liable to the county in a civil action for damages resulting therefrom.

Penalty for obstructing highway by ditch, etc.

SEC. 1828. Any person or persons, corporation or company, owning or constructing any ditch, race, drain or flume, in, upon, or across any highway, shall keep the highway open for safe and convenient travel by constructing bridges over such ditch, race, drain or flume, or by providing other safe and convenient way across or around the said ditch, and immediately after any ditch is constructed in or upon any highway at any point thereof so as to obstruct or interfere with said highway, the person or persons owning or constructing such ditch shall erect a good and substantial bridge across the same, which shall be constructed of plank of not less than three inches in thickness, and thereafter be maintained by the county. Any person or persons, corporation or company, constructing any ditch, race, drain or flume in, upon or across any highway and failing to keep the highway open for safe and convenint travel, shall forfeit the sum of twenty-five dollars to the county. And any person or persons, corporation or company, who shall fail to erect a good and substantial bridge across any ditch, race, dam or flume, immediately after the same is constructed in, or upon or across any highway, shall forfeit the sum of twenty-five dollars to the county together with costs of constructing there a good and substantial bridge, which the supervisor shall at once proceed to build, and shall also be liable in damages to any person or persons damaged by such neglect.

Disposition of fines.

SEC. 1829. All fines, penalties and forfeitures incurred under any provisions of this act shall be recoverable by an action in the name of the people of the Territory of Montana in any court of competent jurisdiction and the county treasurer shall set the same apart to the district wherein the same accrued.

Duty of county attorney.

SEC. 1830. It shall be the duty of the county attorney on complaint of any person to prosecute all actions under the provisions of this act.

Appointment bonds and fees of supervisors.

SEC. 1831. All road supervisors shall be appointed by the county commissioners at their March term, and shall serve until their successors are appointed and qualified. They shall give such bonds as the board of county commissioners in the several counties shall deem sufficient; any vacancy occurring in said office of supervisor of roads, by death or otherwise, shall be filled by the board of commissioners. Said supervisor shall be allowed as compensation the sum of three dollars for each day while employed in performing the duties required by this act, to be allowed by the county commissioners on presentation to them of vouchers showing the number of days sworn to by the supervisor.

Repeal.

SEC. 1832. That all of Article I, Chapter LIV, Fifth Division "Revised Statutes of Montana," and all acts and parts of acts in conflict with this act be, and the same are hereby repealed; *Provided*, That the repeal of such acts shall not be construed to affect any right nor to abate any suit or action or proceeding existing or pending under the acts hereby repealed.

NOTE.—Sections 1796 to 1832, both inclusive, are respectively sections 1 to 37, both inclusive, and comprise all of "An Act concerning roads and highways," approved March 9, 1887

Supervisor may employ laborers, etc.

SEC. 1833. Whenever the board of commissioners shall instruct or direct any road supervisor to repair any public road in his district, or construct any new road therein, it shall be the duty of the road supervisor to proceed, without unnecessary delay, to repair or construct said road. For this purpose he shall be empowered to employ suitable laborers and teams, and stipulate as to the price to be paid therefor, which in no case shall exceed the sum of two dollars and fifty cents per day for each man, and two dollars and fifty cents per day for each span of animals thus employed. He shall keep a correct account of all such labor, and give to the person performing it, or furnishing any animals, a certificate, stating the number of days' work performed and the price agreed upon therefor, and the number of days any animals have been used and the price to be paid therefor, not exceeding the limits above prescribed. The supervisor shall also make out and file with the county clerk on or before each quarterly meeting of the commissioners, or monthly, if required by them, a detailed statement, showing—

Statement to be made by supervisor

First. The names of all persons employed to work on the public roads, and the number of days each person has worked, and the place or places where the work was done and the price to be paid therefor.

Second. The number of teams used, and of whom employed, and the place or places where they worked, and the price of hire.

Third. The number of days the supervisor himself has been employed in attending to the duties of his office.

The above statement shall be sworn to by the supervisor and filed with the county clerk, with the account for his services rendered.

Payment of claims, etc

SEC. 1834. The county commissioners, at the first quarterly meeting, or at any special meeting, held after filing the statement mentioned in the last section, shall examine the same, and if found correct, shall cause an order to be drawn on the county treasurer, against the road fund, for the amount due any road supervisor for his services. Upon the presentation of any certificate issued by road supervisors, as provided in section 1833 of this chapter, and a verification by the owners thereof as in other cases of claims against the county, the commissioners shall cause to be issued to the owner or holder of such claim an order for the amount thereof, drawn on the county treasurer, against the road fund.

Penalty for issuing false certificate

SEC. 1835. Any road supervisor who shall issue any false or fraudulent certificate for labor or animals employed, or who shall issue a certificate for any greater number of days' labor than was actually performed, or for any greater price than was actually agreed to be paid for such labor or the use of such animals, or who shall collusively or fraudulently make any agreement or stipulation whereby he is to receive any part of the money which shall or may be paid upon any certificate, or who shall make any false statement as to the time which he has been engaged in attention to his duties as road supervisor, shall, upon conviction thereof, be fined in any sum not less than one hundred dollars, nor more than five hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months, or by both such fine and imprisonment, in the discretion of the court, and shall be removed from the office of road supervisor. Any person knowingly receiving from any road supervisor any false or fraudulent certificate, such as that above named, or who shall stipulate or agree to pay to the road supervisor any part of the money received thereon, shall, upon conviction, be fined in a sum not less than twenty-five dollars, nor more than one hundred dollars, or by imprisonment in the county jail not less than ten days, nor more than thirty days, or by both such fine and imprisonment, in the discretion of the court, and shall forfeit the amount of money called for by such fraudulent certificate.

Penalty for failure of supervisor to perform his duty.

SEC. 1836. Upon the neglect or failure of any person appointed road supervisor to perform the duties required under this act, or upon the death, resignation, removal or other disability of any road supervisor, the county commissioners at their next regular meeting after such disability occurs, shall appoint a road supervisor, who shall hold the office for the unexpired term of the person in whose stead he was appointed.

NOTE.—Sections 1833 to 1836, act of March 12, 1885.

14th ses. p. 119

Proceeding if person has no taxable property.

SEC. 1837. If any person required to pay the poll tax mentioned in the preceding sections has no property subject to taxation, it shall be the duty of the county assessor to collect the poll tax at the time of making the assessment, and if it be not paid at the time, if the person owing the same is in the employ of any other person, company or corporation, it shall be the duty of the assessor to deliver to the person, company or corporation employing such person or persons a written notice, stating the amount of tax owing by any employe or employes, and from the time of receiving said notice the person, company or corporation employing such delinquent shall be liable to pay said tax and the tax so paid may be deducted by such employer from the amount then due or to become due to such employe.

Employer to give list of employes.

SEC. 1838. Any person, company or corporation having in his or their employ any person liable the tax of three dollars above mentioned to pay shall, at the request of the assessor, give to him a complete list of all the persons so employed, and if any person, company or the superintendent of managing agent of any corporation shall neglect or refuse to furnish said list for five days after demand made to furnish it, the person, company or corporation so neglecting or refusing shall be liable for the tax, and the assessor shall proceed to levy the same as in cases where persons neglect or refuse to list their property.

Duty of assessor.

SEC. 1839. The assessor shall pay over to the county treasurer all moneys collected as a special tax, and take a receipt therefor, and shall also deliver to the treasurer a list of the persons who have paid the same, or for whom it has been paid, and also a list of all the persons liable to pay said tax, but who are delinquent. The treasurer shall thereafter collect the tax from such as are delinquent, if in his power, and if not, he shall return a list of all persons who have failed to pay to the board of county commissioners with his annual report of taxes collected. The assessor shall also return a list of the persons, company, or corporations mentioned in section three, which have neglected or refused to return a list of the persons in their employ, and the amount for which each has been assessed, and the treasurer shall collect the amount thereof as in other cases of assessment and levy.

NOTE.—Sections 1837 to 1839, inclusive, act of March 12, 1885

12th ses. p. 71.

Contracts for bridges etc, to be let to lowest bidder.

SEC. 1840, The erection and repairing of bridges and approaches thereto, the building of culverts, repairs and improvements on roads, the cost or expense of which shall exceed one hundred dollars, shall be let by the county commissioners to the lowest competent bidder; and every bidder before entering on any work pursuant to contract, shall give a bond to the county, with at least two good and sufficient sureties, in any sum double the amount of the contract, which bond shall be approved by the county commissioners, conditioned for the faithful execution of the contract.

12th ses. p. 71.

Advertisement for bids.

SEC. 1841. Before any contract as aforesaid, shall be let, the county commissioners shall advertise for bids therefor, and shall require bidders to accompany their bids with plans and specifications of the work, and they may accept the most suitable plan, and award the contract accordingly, or may reject any and all bids.

11th ses. p 71.

Apportionment of road funds

SEC. 1842. It shall be the duty of the board of county commissioners at each session thereof to apportion the amount of money in the treasury available for road purposes to the several road districts, and notify the road supervisor of the amount subject to his order, and in no case shall any supervisor be allowed to draw more money than is apportioned to said district.

Temporary obstructions.

SEC. 1843. The provisions of sections 1840 and 1841 shall not apply to temporary obstructions occurring in roads already laid out and opened.

NOTE.—Sections 1840 to 1843, inclusive, from act of February 22, 1881.

14th ses. p 114

Contracts to lowest bidder.

SEC. 1844. The board of county commissioners of the several counties may, in their discretion, let to the lowest responsible bidder, in pursuance of this chapter, a contract or contracts for repairing and keeping in good order the public roads in any road distict now or which may hereafter be established.

Bids for keeping roads in repair.

SEC. 1845. The county commissioners, at their regular quarterly meeting on the first Monday in March, in each year, shall, in their discretion, advertise for bids for keeping in proper repair the public roads in any road district of the county, such advertisement to be published at least once a week for four successive weeks, in some newspaper published within the county, or, if none is published therein, in a newspaper published nearest the county-seat of the county. A copy of said advertisement shall also be posted on the door or bulletin board of the court house of the county, for at least four weeks before any contract is awarded. The advertisement shall state the name or number of the road district for which bids are invited, and the time of receiving bids, which in no case shall be later than the next quarterly meeting of the board of county commissioners, on the first Monday of June following. The advertisement shall also state the length of time the contract shall run, as provided in section 1843 of this chapter.

Bids, how made.

SEC. 1846. All bids must be in writing and subscribed by the person or persons bidding; shall be sealed and addressed to the board of county commissioners, and indorsed "Bid for keeping in repair the public roads in (naming the road district)."

Bids, when opened.

SEC. 1847. At their regular meeting on the first Monday in June in each year the board of commissioners shall open and examine all bids offered, and may either reject all bids or award a contract to the lowest bidder, in pursuance of the next section.

Bond of contractor.

SEC. 1848. If the commissioners decide to award a contract, the person or persons to whom it is awarded shall, before it is entered into, execute and deliver to the commissioners an undertaking, with two or more sureties, to be approved by the commissioners, in a sum not less than one thousand dollars, conditioned that the contractors will keep the public roads and highways of the district (naming it) in good order and repair, and suitable for the passage of animals or loaded wagons, or both, as the case may be, for one year from the first day of July following until the same day in the succeeding year. Upon the execution and acceptance of the said undertaking, the contract shall be awarded.

14th ses p 114

Inspection of roads by supervisor

SEC. 1849. The road supervisor of any road district in which contracts may be awarded, in pursuance of this act, shall inspect the public roads of his district, and report the condition thereof to the county commissioners on or before each regular quarterly meeting of the board. The road supervisor shall also, upon written complaint that any public road of his district is not in proper repair, proceed without delay to examine the same, and if found in bad condition, he shall immediately notify the contractor or contractors to repair the road; and unless the contractor or contractors shall proceed, with reasonable diligence, to repair the road, the supervisor shall report the condition of the road, and the fact of the notification, and failure of the contractor or contractors to repair the same to one or more of the county commissioners; and the board of commissioners, at their first meeting after receiving said report, shall, or may, in their discretion, authorize the road supervisor of the district to repair the road, keeping an accurate account of the expense thereof, and shall report the same, duly verified, to the commissioners, on or before their next quarterly meeting. The commissioners shall withhold or deduct the cost of such repairs from any sum due or to become due to the person or persons who have contracted to keep the roads in repair.

Contract for new road

SEC. 1850. Whenever the board of county commissioners shall decide to establish any new road, they may, in their discretion, award a contract for constructing it upon like terms and conditions as are expressed in this chapter for keeping roads in repair.

Payments to contractors

SEC. 1851. Payments to road contractors shall be made quarterly, by order drawn on the county treasurer, against the road fund, which shall be payable as are other county orders.

NOTE—Sections 1844 to 1851, inclusive, act of March 12, 1885

13th ses. p. 94

Street tax in cities.

SEC. 1852. It shall be competent for the municipal authorities of any town or city incorporated under the laws of this territory to provide by ordinance for the levy and collection of a tax of not exceeding two mills on the dollar on all taxable property within the corporate limits of such town or city, and also a special tax of three dollars on each able bodied man between the ages of twenty-one and forty-five years, residing within the corporate limits of such town or city, which shall constitute a street fund, and shall be expended in opening, improving and keeping in repair the streets and alleys of such town or city.

Tax may be worked out.

SEC. 1854. All ordinances for the levy and collection of street taxes, either special or *ad valorem*, shall provide that persons liable to pay the same, may work out such taxes, if they elect so to do, under the direction of the street commissioner or supervisor of such town or city, upon the streets thereof, and shall provide for giving notice of the time and place when and where such work shall be required to be done.

No road tax levied where street taxes collected.

SEC. 1854. Whenever any such town or city shall provide by ordinance for the levy and collection of such street taxes, no further or other road tax shall be levied or collected by the county treasurer of the county in which such town or city is situated, of or from the residents thereof, nor shall any portion of the road taxes collected in the county be expended upon the the streets or alleys of such corporate town or city, and thirty per cent. of the *ad valorem* tax collected under and by virtue of any such ordinance shall be paid into the county treasury by the city treasurer, and so much of said thirty per cent. as may be necessary shall be apportioned to the road district in which such town or city is situated, to be expended on roads of said district outside town limits, and the surplus, if any, shall be for the credit of the general road fund.

NOTE —Sections 1852, 1853 and 1854, act of March 7, 1883

CHAPTER CII.

TOLL ROADS AND BRIDGES.

Sec. 1855. County commissioners prohibited from authorizing the collection of toll.

Sec. 1856. Contracts declared void.

Sec. 1857. Toll roads without charters may be declared public highways.

Sec. 1858. Refusal to surrender, or destroying road, declared a misdemeanor.

Sec. 1859. Forfeiture of franchise; Penalties.
Sec. 1860. Toll may be collected upon special permit.

No authority to collect toll.

SEC. 1855. That the county commissioners of the several counties of the Territory of Montana shall not be permitted to authorize any person or persons, company or corporation, to collect toll on any road or bridge for the benefit of such person or persons, company or corporation.

Contract declared void.

SEC. 1856. If there shall be any contract or agreement between county commissioners and any person or persons, company or corporation by which the same collect toll, such contract or agreement is hereby revoked and made null and void.

County may take possession of unchartered toll roads.

SEC. 1857. All public roads or highways claimed by any person or persons, company or corporation, on which toll is collected or taken without having a charter for the same, granted by the legislative assembly of the Territory of Montana, may be taken possession of by the county commissioners of the county in which the same may be; which road shall thereafter be a free public highway.

Penalty for refusal to surrender unchartered road

SEC. 1858. Any person or persons, company or corporation, who shall refuse to surrender such road to the county commissioners of the county in which the same may be, for the use and benefit of the public travel, or shall in any way obstruct or cause to be obstructed, destroy or cause to be destroyed, any such road, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than one hundred dollars, or more than one thousand dollars, or imprisonment in the county jail not less than three months or more than one year, or both such fine and imprisonment, at the discretion of the court.

Forfeiture of franchise, penalties.

SEC. 1859. Any person or persons within this territory, now in the possession of any road or bridge as agent of any corporation, or as owner of any franchise thereon, who shall permit the same to become and remain out of repair, shall forfeit such franchise; and any such agent or owner who shall obstruct or impair any such road or any bridge thereon, or shall interfere with any such bridge so that the same shall not be convenient and safe for all public travel, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding six months, or by both such fine and imprisonment; and all roads, highways and bridges now or heretofore held by virtue of any charter, franchise or other corporate right, upon the expiration of such franchise, are hereby declared public highways, and with all the improvements thereon, shall be, from the time of the expiration of such franchise, under the direction of the board of county commissioners of the county in which such road or bridge or other improvement may be.

NOTE—Act February 13, 1874.

Ex. ses p 14.

Special permit to collect toll.

SEC. 1860. No person or persons shall be entitled or allowed to collect toll upon any toll-road, ferry or bridge constructed or established under the provisions of this chapter, except upon special permit granted by the board of county commissioners of the county in in which such road, ferry or bridge is situate, which said board shall at the time fix the rate of such toll, which they may thereafter alter, change or abolish at pleasure.

NOTE.—Section 1860 act of July 22, 1879.

CHAPTER CIII.

SCHOOL LAW.

Sec. 1861. Of the office and duties of "superintendent of public instruction."
Sec. 1862. Forms to be prepared by the superintendent.
Sec. 1863. To visit the schools and traveling expenses.
Sec. 1864. Place of office, and salary of.
Sec. 1865. Annual appropriations for necessary expenses.
Sec. 1866. Delivery of archives to successor.
Sec. 1867. Duty of county treasurer.
Sec. 1868. Of the office of county superintendent.
Sec. 1869. Of apportionments by county superintendent.
Sec. 1870. Duties of county superintendent.
Sec. 1871. Forfeiture for failure to report.
Sec. 1872. Power to administer oaths without fee.
Sec. 1873. Power to appoint trustees and clerks, and to fill vacancies.
Sec. 1874. Boundaries of school districts.
Sec. 1875. New districts formed, old ones changed, and persons transferred to other districts.

Sec. 1876. Share of school moneys and taxes in new district.
Sec. 1877. Of apportionment to new district.
Sec. 1878. District lying in two counties.
Sec. 1879. Powers and duties of trustee.
Sec. 1880. Annual election of trustees and clerk.
Sec. 1881. Term of office and qualification of trustees.
Sec. 1882. Organization of new district and election of officers.
Sec. 1883. Time of opening and closing polls.
Sec. 1884. Duties of district clerk.
Sec. 1885. General powers of board of trustees.
Sec. 1886. School census: Fees of clerk for taking.
Sec. 1887. School supplies and repairs and clerk's account.
Sec. 1888. Liability of board of trustees.
Sec. 1889. Contracts with adjoining districts.
Sec. 1890. Who may be admitted as scholars.
Sec. 1891. School exercises and language.
Sec. 1892. African children.
Sec. 1893. Partisan and sectarian tuition prohibited.
Sec. 1894. School hours prescribed.
Sec. 1895. Pupils required to conform to regulations, and liability of parents.
Sec. 1896. Teacher's report.
Sec. 1897. Teacher's other duties.
Sec. 1898. Construction of term; "school months."
Sec. 1899. Teacher to hold scholars to strict accountability.
Sec. 1900. Moral and political teachings.
Sec. 1901. Proceeds from school lands.
Sec. 1902. Taxes and fines for school support.
Sec. 1903. Reports of county clerk, clerk of district court, probate judges and justices of the peace, to county superintendent.
Sec. 1904. Establishment of "high schools."
Sec. 1905. Taxes for additional school facilities.
Sec. 1906. Levy and collection of such taxes.
Sec. 1907. Apportionment of school moneys.
Sec. 1908. Purposes for which school moneys to be used.
Sec. 1909. No district entitled to moneys unless teacher hold certificate.
Sec. 1910. District entitled to no moneys unless three months' school held.

Sec. 1911. School officer to deliver to successor all property of his office.
Sec. 1012. Official oath of school officer.
Sec. 1913. Trustees not to be interested in contracts.
Sec. 1914. Collection of fines and penalties.
Sec. 1915. Abuse of teacher in presence of school a misdemeanor.
Sec. 1916. Disturbance of school or school meeting a misdemeanor.
Sec. 1917. Liability of district clerk for neglect to take census.
Sec. 1918. Disputes referred to county superintendent, appealed to territorial superintendent.
Sec. 1919. School year.
Sec. 1920. Printing and binding under this act.
Sec. 1921. Compulsory education enjoined.
Sec. 1922. Penalty for not complying with section 1922.
Sec. 1923. Duties of trustees under section 1922.
Sec. 1924. Malicious prosecution.
Sec. 1925. Examination of teachers,—certificates.
Sec. 1926. Classification of certificates.
Sec. 1927. "Montana School law."

Of the office and duties of superintendent of public instruction.

SEC. 1861. A superintendent of public instruction shall be appointed by the governor, by and with the advice and consent of the legislative council, and shall enter upon the duties of his office on or before the twentieth day after his appointment, and shall hold office for the term of two years, or until his successor is appointed and qualified;a nd shall execute a bond in the penal sum of two thousand dollars, with two good and sufficient securities to be approved by the secretary of the territory, conditioned upon the faithful discharge of his official duties. The superintendent of public instruction shall have power to adopt a course of studies and rules and regulations for all public schools in the territory, and shall have and use a seal, and authorize the printing of all regulations and circulars necessary to carry their provisions into effect; and shall report to the governor biennially, on or before the first day of December of the years in which the regular sessions of the legislature are held. The governor shall transmit said report to the legislature, and, whenever it is ordered printed, a sufficient number of copies shall be delivered to the superintendent of public instruction, to furnish two copies to be deposited in the territorial library, and one copy to each superintendent of common schools, to be held by him as public property, and delivered to his successor in office; and one copy to each local school officer within the territory. Said report shall contain a statement of the condition of the public schools in the territory, full statistical tables by counties, showing, among other statistics, the number of school children in the territory, the number attending public schools, the average attendance, the number attending private schools, and the amount raised by county and district taxes, or from other sources of revenue, for school purposes, the amount expended for salaries of teachers and for building and furnishing school houses, and the statement of the plans for the management and improvement of schools.

Forms to be prepared by the superintendent

SEC. 1862. The superintendent of public instruction shall prepare and cause to be printed suitable forms for making all reports and conducting all necessary proceedings under this article, and shall transmit them to the local school officers and teachers, who shall be governed in accordance therewith; he shall furnish each superintendent of common schools with suitable diplomas and certificates, and shall prepare a school register, which shall be furnished to each school district in the territory.

Visits and traveling expenses.

SEC. 1863. It shall be the duty of the superintendent of public instruction to travel in the different counties of the territory where common shools are taught, so far as possible, without neglecting his other official duties, during at least three months in each year, for the purpose of visiting schools, of consulting county superintendents, and addressing public assemblies on subjects pertaining to public schools; and his necessary traveling expenses, not exceeding the sum of five hundred dollars in any one year, shall be paid out of any funds in the treasury not otherwise appropriated.

NOTE—See note to section 1926

Place of office and salary

SEC. 1864. The superintendent of public instruction shall keep his office at some place where there is a postoffice, and he shall receive a salary of twelve hundred dollars per annum, which shall be paid quarterly out of the territorial treasury.

Appropriation for actual expenses.

SEC. 1865. All necessary expenditures of money incurred by the superintendent of public instruction, for rent, fuel, postage, printing, expressage not exceeding two hundred dollars in any one year, shall be paid out of any fund in the treasury not otherwise, appropriated, and the territorial auditor is hereby author-

Delivery of papers, etc., to successor.

ized to issue his warrant on the treasury for the same.

SEC. 1866. The superintendent shall, at the expiration of his term of office, deliver over, on demand, to his successor, all property, books, documents, maps, records, reports and other papers belonging to his office, or which may have been received by him for the use of his office.

Duty of county treasurer.

SEC. 1867. It shall be the duty of the county treasurer of each county—

First. To receive and hold all school moneys as a special deposit, and to keep a separate account of their disbursement to the several school districts which shall be entitled to receive them, according to the apportionment of the county superintendent of common schools.

Second. To notify the county superintendent of common schools of the amount of county school fund in the county treasury, subject to apportionment, whenever required; and to inform said superintendent of the amount of school moneys belonging to any other fund subject to apportionment.

Third. To pay all warrants drawn on county or district school moneys, in accordance with the provisions of this article, whenever such warrants are countersigned by the district clerk and properly endorsed by the holders.

Fourth. To make, annually, during the month of September of each year, a financial report for the last preceding school and fiscal year ending with August 31, to the county superintendent of common schools, in such form as may be required by him.

13th ses. p. 53.

County superintendent.

SEC. 1868. A county superintendent of common schools shall be elected in each organized county in this territory at the general election preceding the expiration of the term of office of the present incumbent, and every two years thereafter, who shall take office on the first Monday in December next succeeding his election, and hold for two years, or until his successor is elected and qualified. The person so elected shall take the oath or affirmation of office, and shall give an offcial bond to the county in a sum to be fixed by the board of county commissioners of said county. The county commissioners of any county shall, by appointment, fill any vacancy that may occur in the office of county superintendent until the next general election: *Provided,* That all persons otherwise qualified shall be eligible to the said office of county superintendent of common schools without regard to sex.

NOTE.—Section 1868, act of March 8, 1883.

Apportionment of school moneys

SEC. 1869. The county superintendent shall apportion all school moneys to the school districts in accordance with the provisions of this article quarterly, and he may make apportionments at such other times as may be required or deemed necessary for the convenience of school officers. He shall certify to the several district clerks and county treasurers the amount so apportioned to the several districts, and the trustees shall draw their warrants on the county treasurer in favor of persons entitled to receive the same. Such warrant shall show for what purpose the money is required, and no such warrant shall be drawn unless there is money in the treasury to the credit of such district.

Powers and duties of county superintendent

SEC. 1870. The county superintendent shall have power, and it shall be his duty:

First. To visit each school in his county at least once a year.

Second. To distribute promptly all reports, laws, forms, circulars and instructions which he may receive for the use of school officers and teachers, from the superintendent of public instruction.

Third. To report to the superintendent of public instruction annually on or before the first day of December, for the school year ending August 31, next preceding, such statistics as may be required of him.

Fourth. To enforce the course of study adopted by the territorial superintendent of public instruction.

Fifth. To enforce the rules and regulations required in the examination of teachers.

Sixth. To keep on file and preserve in his office the biennial report of the superintendent of public instruction.

Seventh. To keep in a good and well bound book, to be furnished by the county commissioners, a record of his official acts.

Eighth. To carefully preserve all reports of school officers and teachers, and, at the close of his term of office, deliver to his successor all records, books, documents and papers belonging to the office, taking a receipt for the same, which shall be filed in the office of the county clerk.

NOTE —See note to section 1926.

Penalty for failure to make report.

SEC. 1871. If the county superintendent fails to make a full and correct report to the superintendent of public instruction, of all statements required to be made by law, he shall forfeit the sum of one hundred dollars from his salary, and the board of county commissioners are hereby authorized and required to deduct therefrom the sum aforesaid, upon information from the superintendent of public instruction that such reports have not been made.

May administer certain oaths, etc

SEC. 1872. The county superintendent shall have power to administer oaths and affirmations to school trustees, assessors, collectors, teachers and other persons in all official matters connected with or relating to schools, but shall not have power to make or collect any charge or fee for so doing.

May make certain appointments.

SEC. 1873. The county superintendent shall have power, and it shall be his duty, to appoint trustees to fill vacancies in any district arising from failure to elect at the proper time, resignation or other causes, and in the organization of new districts until the next annual district election: *Provided*, That when a new district is organized, such trustees of the old district as reside within the limits of the new one shall be trustees in the new district, and the vacancies in the old district shall be filled by appointment until the next annual district election.

NOTE.—See note to section 1926.

Duty of county superintendent as to school boundaries.

SEC. 1874. It shall be the duty of every county superintendent to inquire and ascertain whether the boundaries of school districts in his county are definitely and plainly described in the records of the county board of commissioners, and to keep in his office a full and correct transcript of such boundaries. In case the boundaries of districts are conflicting, or incorrectly described, he shall change, harmonize and describe them, and make a report of such action to the commissioners; and on being ratified by the commissioners the boundaries and description so made shall be the legal boundaries and descriptions of the districts of that county. The county superintendent shall furnish the several district clerks with descriptions of the boundaries of their respective districts.

Organization of new school district.

SEC. 1875. For the purpose of organizing a new district or for the sub-division of or change in the boundaries of an old one, except as provided in section 1874, at least five heads of families must present a petition to the county superintendent, setting forth the boundaries of the new district asked for, or the change of the boundaries desired, with the reasons for the same. The county superintendent shall, after giving due notice to all parties interested, transmit the petition to the board of county commissioners, with his approval or disapproval, and such changes in the boundaries as he may deem necessary or advisable. The commissioners shall establish the district as approved by the county superintendent: *Provided*, That by a vote of the board they may establish the district in accordance with the original prayer of the petition, or with such modification as they may choose to make, or may reject it. In any case of alleged hardship, any head of family, parent or guardian, may make a statement of the facts to the board of commissioners, and if, in the judgment of the board, good cause be shown for such transfer, he may be transferred to another district.

New district not entitled to school money until school is commenced

SEC. 1876. No new district formed by the subdivision of an old one shall be entitled to any share of the public moneys belonging to the old district until a school has been actually commenced in such new district, and unless within eight months from the action of the commissioners a school is opened, then the action making a new district shall be void, and all elections or appointment of trustees made in consequence of such action, and all rights and offices of the parties so elected or appointed shall cease and determine; and all taxes which may have been levied in such old district shall be valid and binding upon the real and personal property of the new district, and shall be collected and paid into the school fund of the district.

New district entitled to fair share of school money.

SEC. 1877. When a new district is formed by the division of an old one, it shall be entitled to a just share of the school moneys to the credit of the old district, after the payment of all outstanding debts at the time when a school was actually commenced in such new district; and the county superintendent shall divide and apportion such remaining moneys, and such as may afterwards be apportioned to the old district, according to the number of census children resident in each district, for which purpose he may order a census to be taken.

As to district lying partly in two counties.

SEC. 1878. Whenever a district is formed lying partly in two adjoining counties, the clerk of the district shall report to each county superintendent the number of children in the district residing in his county. In the same manner the trustees and teacher shall make a distinct and separate report of all school statistics; and a teacher's certificate, granted by the county superintendent of one county shall be valid for both counties.

Powers and duties of trustees.

SEC. 1879. The board of trustees of each school district shall have custody of all school property belonging to the district, and shall have power in the name of the district, or in their own names as trustees of the district, to convey by deed all the interest of their district in or to any school house or lot directed to be sold by vote of the district; and all conveyances of real estate made to the district or to the trustees thereof, shall be made to the board of trustees of the district, and to their successors in office. Said board, in the name of the district, shall have power to transact all business necessary for maintaining schools and protecting the rights of the district.

Annual election of trustees.

SEC. 1880. An annual meeting for the election of trustee or trustees, shall be held in each district on the first Saturday in April of each year at the district school house, if there be one, and if there be none at a place designated by the board of trustees. The term of all trustees now holding office shall expire upon the election and qualification of their successors. The trustees shall post written notices of election, specifying the day, time and place of meeting, in at least three public places in the district, one of which shall be the school house, if there be one, at least fifteen days previous to the time of meeting. And in addition to posting such written notices the trustees shall cause the same to be published in some newspaper published in the district, or if there be none published in the district then in some newspaper published in the county. All elections shall be held by ballot, and the trustees shall have power to determine the hours during which the ballot-box shall be kept open, having given due notice thereof in the posted notices of election. Every person, without regard to sex. who is over twenty-one years of age, and a taxable inhabitant of the district, shall be entitled to vote. Any person offering to vote may be challenged by any legally qualified voter of the district, and the chairman of the board of trustees shall thereon administer to the person challenged, an oath in substance as follows: You do swear (or affirm) that you are a citizen of the United States or have declared your intention to become such, that you are twenty-one years of age, according the best of your information and belief, that you have resided in this territory six months next preceding this election, that you are a taxable resident of this school district, and that you have not before voted this day. If the elector shall refuse to take the oath his vote shall be rejected, and any person guilty of illegal voting shall be punished as provided in the general election laws of this territory. The trustees shall be judges and inspectors of election, and if they are not present at the time for opening the polls, the electors present may appoint the officers of election. A poll and tally list shall be kept by the clerk of the board of trustees, and with the exceptions mentioned in this section, the election shall be conducted as far as practicable in the form and manner of the general election. Any one of the old trustees shall have power to administer to any trustee elect the oath of office, and the clerk of election shall issue the certificate of election to any trustee elect, who shall forward it to the county superintendent of public schools.

NOTE — See note to section 1926.

Term of office and qualifications of trustees.

SEC. 1881. In all organized districts in which elections have been previously held, one trustee shall be elected for the term of three years, and if there are vacancies to be filled, a sufficient number to fill them for the unexpired terms; and the ballots shall specify the respective terms for which each trustee is to be elected. In new districts acting under trustees appointed by the county superintendent, three trustees shall be elected for one, two and three years, respectively. Trustees-elect shall take office immediately after qualifying, and shall hold office until their successors are elected and qualified, or appointed by the county superintendent and qualified. Any trustee-elect who shall fail to qualify within ten days after being elected, shall forfeit all right to the office, and the county superintendent shall appoint to fill the vacancy.

Election in new district.

SEC. 1882. Whenever any new district is formed by ordinance of the board of commissioners, within thirty days thereafter a special school meeting may be called by notice of any three legal voters of said district, and such meeting shall be conducted in the manner and form prescribed in this chapter for the annual school meeting for the election of trustees. Such new district shall be considered organized whenever any two of the trustees elected shall have qualified; and the record of the district clerk shall be *prima facie* evidence of the legal organization of the district, and the district shall be designated by numbers.

Hours for keeping polls open at school meeting.

SEC. 1883. No district school meeting, annual or special, shall be organized before nine o'clock A. M., or closed before twelve o'clock M., or kept open less than one hour, and in all districts in which the number of youth and children between four and twenty-one years of age equals or exceeds three hundred, the polls shall be kept open from two o'clock P. M. until sunset.

Duties of school clerk.

SEC. 1884. It shall be the duty of the district clerk to record all proceedings of the board of trustees in a suitable book; to record in the same book the proceedings of the annual school meetings, or of special school meetings, and to keep an accurate and detailed account of all receipts and expenditures of school moneys. At each annual school meeting the district clerk shall present his record book for inspection, and shall make a statement of the financial condition of the district; *Provided*, That the district record book shall be open to the public at all times. The district clerk shall report annually during the month of September of each year, for the school year next preceding to the county superintendent in the manner and form and on the blanks prescribed by the superintendent of public instruction, and for making said annual report on or before the specified time he shall be paid the sum of five dollars, and for each day's neglect after the time specified by law for rendering said report the sum of five dollars shall be deducted by the county superintendent from the moneys apportioned to said district and return the same to the general school fund of the county. It shall be the duty of the district clerk to give written notice to the county superietendent of the time of opening the school in his district, the length of term, and the names of the teachers thereof. He shall also report directly to the superintendent of public instruction whenever required, the text books used in the schools.

NOTE.—See note to sections 1926.

Powers and duties of school trustees.

SEC. 1885. Every board of trustees, unless otherwise especially provided by law, shall have power and it shall be their duty—

First. To employ and, for sufficient cause, dismiss teachers, mechanics and laborers, and to fix, alter, allow and order paid their salaries and compensation.

Second. To enforce the rules and general regulations of the territorial superintendent of public instruction for the government of schools, pupils and teachers and to enforce the course of study adopted in pursuance of territorial law.

Third. To provide and pay for school furniture and apparatus, and such other articles, materials and supplies as may be necessary for school use or for the use of the school board.

Fourth. To suspend or expel pupils from school, and in cities or large towns to exclude from school children under six years of age where the interests of the school require such exclusion.

Fifth. To rent, furnish, repair and insure school houses.

Sixth. To build or remove school houses, and purchase or sell school lots, when the trustees may be directed by a vote of the district so to do.

Seventh. To purchase personal property and to receive lease and hold in fee, in trust for their district, town or city, any and all real or personal property for the benefit of the schools thereof.

Eighth. To provide books for indigent children on the written statement of the teacher that the parents of such children are not able to purchase them.

Ninth. To require all pupils to be furnished with suitable books as a condition of membership in the school.

Tenth. To exclude from school and school libraries, all books, tracts, papers or catechisms of a sectarian or political character.

Eleventh. To require every teacher to keep a school register.

Twelfth. To require teachers to make such annual reports as may be required by the superintendent of public instruction.

Thirteenth. To appoint a district clerk and fix his compensation.

Fourteenth. To provide evening schools for persons above the age of fourteen years.

NOTE.—See note to section 1926

School census.

SEC. 1886. It shall be the duty of the district clerk to take annually, between the twentieth and thirtieth days of November of each year, an exact census of all children and youth over four and under twenty-one years residing in the district, and shall specify the number and sex of such children, and the names of their parents or guardians. He shall take, specifically and separately, a census of all children under four years of age, and shall specify the number and sex of such children. All children who may be absent from home attending boarding schools and private seminaries of learning shall be included by the district clerk in the census list of the city, town or district in which their parents reside, and shall not be taken by the district clerk of the city, town or district where they may be attending such private institution of learning. He shall make a full report thereof on the blanks furnished for that purpose, under oath, to the county superintendent on or before the first day of December thereafter and deliver a copy to the school trustees. The district clerk shall be paid by the board of trustees from the county school money, to the credit of the district, in the same manner as other contingent expenses are paid, at a rate not exceeding ten cents for each name returned by him.

Supplies, etc.

Sec. 1887. The district clerk of each district shall provide all school supplies authorized by this article, and shall keep the school house in repair during the time school is taught therein, and shall keep an accurate record of all expenses incurred by him on account of the school, which account shall be audited by a majority of the board of trustees and paid out of the county school moneys of that district.

Note.—See section 1885.

Who liable for judgment.

Sec. 1888. Any board of trustees shall be liable, as trustees, in the name of the district, for any judgment against the district for any salary due any teacher on contract, and for all debts legally contracted under the provisions of this article, and they shall pay such judgment or liabilities out of the school moneys, to the credit of such district.

Children from adjoining district.

Sec. 1889. Any board of trustees shall have power to make arrangements with the trustees of any adjoining district for the attendance of such children in the school of either district as may be best accommodated therein, and to transfer the school moneys due by apportionment to such children to the district in which they may attend school.

School age.

Sec. 1890. Every school, unless otherwise provided by special law, shall be open for the admission of all children between five and twenty-one years of age residing in that school district, and the board of trustees shall have power to admit adults and children not residing in the district, whenever good reasons exist for such exceptions.

What shall be taught.

Sec. 1891. All schools shall be taught in the English language, and instructions shall be given in the following branches, viz: Reading, writing, orthography, arithmetic, geography, English grammar and history of the United States, and such other studies as may be deemed necessary may be authorized by the trustees of the district. Instructions shall be given during the entire school course in manners and morals and the laws of health, and due attention shall be given to such physical exercises for the pupils as may be conducive to health and vigor of body as well as mind, and to the ventilation and temperature of school rooms.

Children of African descent

SEC. 1892. The education of children of African descent shall be provided for in separate schools. Upon the written application of the parents or guardians of at lest ten such children to any board of trustees, a separate school shall be established for the education of such children, and the education of a less number may be provided for by the trustees in separate schools in any other manner, and the same laws, rules and regulations which apply to schools for white children shall apply to schools for colored children.

Use of partizan or sectarian literature prohibited.

SEC. 1893. No books. tracts, papers, catechisms, or other publications of a partizan, sectarian, or denominational character, shall be used or distributed in any schools, neither shall any political, sectarian, or denominational doctrine be taught therein; and any school district, the officers of which shall knowingly allow any school to be taught in violation of these provisions, shall forfeit all right to any county apportionment of school moneys, and, upon satisfactory evidence of such violation, the county superintendent shall withhold its county apportionment.

Length of school day.

SEC. 1894. The school day shall be six hours in length, exclusive of an intermission at noon; but any board of trustees may fix, as the school day, a less number of hours than six; *Provided*, That it be not less than four, for any primary school under their charge, and any teacher may dismiss any and all scholars under eight years of age, in any incorporated village, town, or city, after an attendance of four hours a day, exclusive of an intermission at noon.

Discipline.

SEC. 1895. All pupils who may be attending public schools shall comply with regulations established in pursuance of law for the government of such schools; shall pursue the required course of study, and shall submit to the authority of the teachers of such schools. Continued and wilful disobedience, and open defiance of the authority of the teacher, shall constitute good cause for expulsion from school; and habitual profanity and vulgarity, good cause for suspension from school. Any pupil who shall in any way cut, deface, or otherwise injure any school house, fences, or outbuildings thereof, shall be liable to suspension and punishment, and the parents or guardians of such pupil shall be liable for damages, on complaint of the teacher or trustees.

Teacher's report.

SEC. 1896. Every teacher employed in any public school shall make an annual report to the county superintendent on or before September first next after the close of each school year, in the form and manner and on blanks prescribed by the superintendent of public instruction. A duplicate of such report shall be furnished to the district clerk. Any teacher who shall end any school term before the close of the school year shall make a report to the county superintendent immediately after the close of such term, and any teacher who may be teaching any school at the close of the school year shall, in his or her annual report, include all statistics form the school register for the entire school year, notwitstanding any previous report for a part of the year. Teachers shall make such additional reports as may be required, in pursuance of law, by the territorial superintendent of public instruction. No board of trustees shall draw any order or warrant for the salary of any teacher for the last month of his or her services, until the reports herein required shall have been made and received,

Teacher to keep register and enforce rules.

SEC. 1897. Every teacher shall keep a school register in the manner provided therefor, and no board of trustees shall draw any warrant for the salary of any teacher for the last month of his or her services in school at the end of any term or year, until they shall have received a certificate from the district clerk that the said register has been properly kept, the summaries made and statistics entered, or until, by personal examination, they shall have satisfied themselves that it has been done. Teachers shall faithfully enforce, in school, the course of study, and the regulations prescribed in pursuance of law; and if any teacher shall wilfully refuse or neglect to comply with such requisition, then the board of trustees shall be authorized to withold any warrants for salary due until such teacher shall comply therewith. No teacher shall be entitled to draw for salary and school moneys, unless such teacher shall be employed by a majority of the trustees,, nor unless the holder of a legal county teacher's certificate, in full force and effect.

School month, and holidays.

SEC. 1898. In every contract, whether written or verbal, between any teacher and any board of trustees, a school month shall be construed and taken to be twenty school days, or four weeks of five school days each, and no teacher shall be required to teach school on Saturdays, the fourth day of July, the first day of January, Christmas day, and no deduction from the teacher's time or wages shall be made by reason of the fact that a school day happens to be one of the days referred to in this section as a day on which school shall not be taught. Any contract made in violation of the provisions of this section shall have no force or effect as against the teacher.

Authority of teacher

SEC. 1899. Every teacher shall have power to hold every pupil to a strict accountability in school, for any disorderly conduct on the way to or from school, or on the play grounds of the school, or during the intermission or recess; to suspend from school any pupil for good cause: *Provided*, That such suspension shall be reported by the teacher to the trustees, as soon as practicable, and their decision shall be final.

Moral and patriotic training of pupils

SEC. 1900. It shall be the duty of all teachers to endeavor to impress on the minds of their pupils the principles of morality, truth, justice and patriotism; to teach them to avoid idleness, profanity and falsehood, and to instruct them in the principles of a free government, and to train them up to a true comprehension of the rights, duties and dignity of American citizenship.

Money realized from sale of school lands.

SEC. 1901. The principal of all moneys accruing to this territory, from the sale of any land which may hereafter be given by the congress of the United States, for school purposes, shall constitute an irreducible fund, the interest accruing from which shall be annually divided among all the school districts in the territory, proportionally to the number of youth or children in each, between the ages of four and twenty-one years, for the support of common schools in said districts, and for no other use or purpose whatever.

School tax.

SEC. 1902. For the purpose of establishing and maintaining common schools it shall be the duty of the county commissioners of each county to lay an annual tax of not less than three nor more than five mills, on the dollar, on all taxable property within their respective counties, as shown by the assessment rolls made by the county assessor for the same year; and to include the same in their warrant to the collector; and the said collector shall proceed to collect the said tax in the same manner as the other county tax is collected; and the said money so collected shall be paid over to the county treasurer, to be drawn in the manner prescribed in this article; neither shall it be lawful for any county treasurer to receive county orders in payment of county school tax, nor to pay out any school money on county orders. For the further support of common schools there shall be set apart by the county treasurer all moneys paid into the county treasury, arising from all fines for a breach of any law regulating license for the sale of intoxicating liquors, or for the keeping of bowling alleys, or billiard saloons, or of any penal laws of this territory. Such moneys shall be forthwith paid into the county treasury by the officer receiving the same, and be added to the yearly school fund raised by tax in each county and divided in the same manner.

Report of county clerk and probate judge to county superintendent.

SEC. 1903. That it shall be the duty of the county clerks of the several counties of the territory to make a report to the county superintendent of common schools within their counties during the month of September of each year, of the school tax levied and the assessed valuation of the proper counties for that year, and that it be the duty of the clerk of the district court, at the close of every term thereof, to report to the county superintendent of the county in which said term shall have been holden, whether or not any fines, and if any what ones, were imposed by the said court during the said term, and that it be the duty of the probate judge and of all justices of the peace, to report to the county superintendent of their respective counties, during the month of September of each year, whether or not they have imposed and collected any fines during the preceding year; and if any what ones, with the date at which the same were paid to the county treasurer; and all officers mentioned in this chapter, who shall fail or neglect to perform any of the duties required by this chapter, shall be deemed guilty of a misdemeanor, and upon conviction before any court having competent jurisdiction thereof shall be fined in any sum not less than twenty dollars, and not more than one hundred dollars for each neglect, and such fine shall be paid into the county treasury for the benefit of common schools in said county.

High school.

SEC. 1904. Whenever the interests of the districts require it, the board of trustees may establish a high school, employ a principal teacher and subordinate teachers, and grade the school into departments and classes.

Taxes for additional school facilities.

SEC. 1905. The board of trustees of any district may, when in their judgment it is advisable, submit to the qualified electors of the district the question whether a tax shall be raised to furnish additional school facilities for said district, or to maintain any school or schools in such district, or for building one or more school-houses, or for removing or building additions to one already built, or for the purchase of globes, maps. charts, books of reference, and other appliances and apparatus for teaching, or for any or all of these purposes. Such election shall be called by posting notices in three of the most public places in the district for at least twenty days. Said notices shall contain the time and place of holding the election, the amount of money proposed to be raised, and the purpose or purposes for which it is intended to be used. The trustees shall act as judges to conduct the election, and it shall be held in all other respects, as nearly as practicable, in conformity with the general election law. At such elections, the ballot shall contain the words: "Tax, Yes," or "Tax, No." If a majority of the votes cast are "Tax, Yes," the officers of the election shall certify the fact to the district clerk, who shall at once proceed to copy from the last assessment roll of the county assessor the list of property liable to taxation, situated in or owned by residents of his district, and shall deliver the same to the board of trustees, who may allow him a reasonable compensation therefor out of the proceeds of said tax; said compensation not to exceed six dollars per day. The trustees shall, upon receiving the roll, deduct ten per cent. therefrom for anticipated delinquencies, and then by dividing the sum voted, together with the estimated cost of assessing and collecting added thereto, by the remainder of the roll, ascertain the rate per cent. required, and the rate so ascertained [using the full cent on each one hundred dollars in place of any fraction] shall be, and is hereby, levied and assessed to, on, or against the persons or property named or described in said roll; and it shall be a lien on all such property until the tax is paid, and said tax, if not paid within the time limited within the next section for its payment, shall be recovered by suit in the same manner and with the same costs as delinquent territorial and county taxes. The trustees, upon receiving any assessment roll from the district clerk, shall give five days notice thereof by posting a notice in three public places in the district, and shall sit for at least one day as a board of equalization, at such time and place as shall have been named in said posted notices; and they shall have the same power as county boards of equalization to make any change in said assessment roll.

Collection of tax.

SEC. 1906. As soon as the rate of taxation has been determined, as provided in the last preceding section, the trustees shall certify the same to the county clerk, who shall extend the same upon the general assessment roll of the county, and certify the same to the county treasurer, who shall proceed to collect the tax, in the same manner and at the same time and with the same power and authority to enforce payment of the same, as in the case of county and territorial taxes. The county treasurer shall place any tax so collected to the credit of the district to which it belongs, and shall receive as compensation for collecting the same, such sum, not more than five per cent of the tax collected, as may be allowed by the county commissioners; said compensation to be paid from the amount of said district tax so collected.

Apportionment of school moneys.

SEC. 1907. All school moneys apportioned by county superintendents of common schools shall be apportioned to the several districts in proportion to the number of school census children between four and twenty-one years of age, as shown by the returns of the district clerk for the next preceding school census: *Provided*, That Indian children, who are not living under the guardianship of white persons, shall not be included in the apportionment list.

NOTE.—Act of February 21, 1879.

Purposes for which school moneys may be used.

SEC. 1908. County school moneys may be used by the county superintendent and trustees for the various purposes as authorized and provided in this article and for no other purpose, except that in any district any surplus in the general school fund to the credit of said district, after providing for the expenses of not less than eight months' school, may, on a vote of the qualified electors of said district, be used for the purposes of building and improvement.

NOTE.—See note to section 1926

District not entitled to money unless teacher has certificate.

SEC. 1909. No school district shall be entitled to receive any apportionment of county school moneys, unless the teacher employed in the schools of such districts shall hold legal certificates of fitness for the occupation of teaching, in full force and effect.

District not entitled to money unless it has at least three months school.

SEC. 1910. No school district shall be entitled to receive any apportionment of any school moneys which shall not have maintained a free public school for at least three months during the next preceding school year: *Provided*, That any new district, formed by the division of an old one, shall be entitled to its apportionment, where the time that school was maintained in the old district, before division, and in the new one after division, shall be equal to at least three months.

School officer must deliver books, etc., to successor

SEC. 1911. When any school officer is superseded by election or otherwise, he shall immediately deliver to his successor in office all books, papers and moneys pertaining to his office; and every such officer who shall refuse to do so, or who shall wilfully mutilate or destroy any such books or papers or any part thereof, or shall misapply any moneys intrusted to him by virtue of his office, shall be guilty of a misdemeanor, and shall be punished by a fine, in the discretion of the court, not exceeding one hundred dollars.

Oaths of school officers.

SEC. 1912. Any person elected or appointed to any office mentioned in this chapter shall, before entering upon the discharge of the duties thereof, take an oath to support the constitution of the United States, the organic act of this territory, and to prcmote the interests of education, and faithfully discharge the duties of his office, according to the best of his abilities. In case such officer has a written appointment or commission, his oath shall be endorsed thereon, otherwise it may be taken orally. In either case it may be sworn to before any officer authorized to administer oaths; and school officers are hereby authorized to administer all oaths relative to school business, appertaining to their respective offices, without charge or fee.

School officer not to be interested in contract.

SEC. 1913. No trustee or other school officer shall be, directly or indirectly interested in any contract, made by the board of which he is a member, and any contract made in violation of this provision shall be null and void.

Fines and penalties

SEC. 1914. All fines and penalties, not otherwise provided for in this chapter, shall be collected by an action in any court of competent jurisdiction, and shall be paid into the county school fund immediately after collection.

Penalty for insulting teacher.

SEC. 1915. Any parent, guardian or other person who shall upbraid, insult or abuse any teacher, in the presence of the school, shall be deemed guilty of a misdemeanor, and liable to a fine of not les than ten dollars nor more than one hundred dollars,

Penalty for disturbing school.

SEC. 1916. Any person who shall wilfully disturb any public school or any public school meeting, shall be guilty of a misdemeanor, and liable to a fine of not less than ten nor more than one hundred dollars.

Liability of clerk.

SEC. 1917. In case any district clerk shall fail to take the census provided in this chapter at the proper time, and if through such neglect the district shall fail to receive its apportionment of school moneys, said district clerk shall be individually liable to the district for the full amount so lost, and it may be recovered on a suit brought by any citizen of such district, in the name of and for the benefit of the district.

Settlement of disputes.

SEC. 1918. All cases of dispute in relation to school matters not properly belonging to courts of justice, may be referred first to the county superintendent and appealed to the territorial superintendent, whose decision shall be final.

School year.

SEC. 1919. The school year shall begin on the first day of September and end on the last day of August.

Printing.

SEC. 1920. All printing or binding required under this article shall be executed in the form and manner and at the prices of other territorial printing and shall be paid in like manner out of the general fund of the territory.

13th ses. p. 56

Compulsory education.

SEC. 1921. Every parent, guardian or other person in the Territory of Montana, having control of any child or children between the ages of eight and fourteen years, shall be required to send such child or children to a public school, or private school, taught by a competent instructor, for a period of at least twelve weeks in each year, six weeks of which time shall be consecutive, unless such child or children are excused from such attendance by the board of trustees of the school district in which such parent, guardian or person having control of such child or children resides, upon its being shown to their satisfaction that such parent or guardian was not able, by reason of poverty, to clothe such child properly, or that such child's bodily or mental condition has been such as to prevent his attendance at school or application to study for the period required, or that such child or children are taught at home by a competent instructor, in such branches as are usually taught in the public schools subject to the same examination as other pupils of the district in which the child resides, or that he has already acquired the ordinary branches required by law, or that there is no school taught within one mile of the domicile or place of residence of such child or children; *Provided*, That no child shall be refused admission to any public school on account of race or color.

Penalty for violation by parent, etc

SEC. 1922. Any parent, guardian or other person failing to comply with the provisions of this act shall upon conviction be deemed guilty of a misdemeanor and fined in a sum not less than five nor more than ten dollars for the first offence, nor less than ten nor more than twenty dollars, or thirty days' imprisonment in the county jail, for the second and every subsequent offence. Said action shall beprosecuted in the name of the Territory of Montana before any court of competent jurisdiction, and all fines so collected shall be paid into the county treasury for the support of common schools.

Duty of trustees to compel attendance of pupils.

SEC. 1923. It shall be the duty of any school trustee to inquire into all cases of neglect of the duty prescribed in this act, and ascertain from the person or persons neglecting the reasons, if any, therefor, and shall forthwith proceed to secure the prosecution of any offence occurring under this act, and any trustee neglecting to secure such prosecution for such offence within ten days after a written notice has been served on him by any taxpayer in said district or city, unless the person or persons so complained of shall be excused by the district board of trustees for reasons hereinbefore stated, shall be deemed guilty of a misdemeanor and liable to a fine of not less than ten nor more than fifty dollars, which fine shall be prosecuted for and in the name of the Territory of Montana, and such fine, when collected, shall be paid into the county treasury, as in section 1923 of this act.

When costs taxed to prosecutor.

SEC. 1924. If, upon the trial of any offence, as charged in section 1923, it shall be made to appear to the satisfaction of the court or judge trying the same, that such prosecution was malicious, then the costs in such case shall be adjudged against the complainant or person instituting such proceedings, and collected as fines in other cases.

13th ses p. 57.

County certificates and examinations.

SEC. 1925. County certificates shall be issued by county superintendents, and shall continue in force respectively for one, two and three years, according to standard of scholarship. The examination may be written or oral, in the discretion of the county superintendent, and shall include the following branches, to-wit: Reading, writing, orthography, arithmetic, geography, English grammar, history of the United States, and the practice of teaching. There shall be at least two public examinations in each county each year, and the questions used in such examinations shall be prepared by the county superintendent and submitted to the territorial superintendent for his approval and correction:

Provided, The county superintendent may at any time hold other examinations, as circumstances may require.

NOTE.—Sections 1921 to 1925, both inclusive, act of March 8, 1885

Classification of certificates

SEC. 1926. First grade certificates shall continue in force three years, and shall be granted to persons who have had not less than twelve months successful experience in teaching. Second grade certificates shall continue in force two years, and third grade certificates one year. Certificates of the first and second grades granted in any county shall be valid in any other county of the territory on being registered with the superintendent of that county, and may be renewed by his endorsement thereon.

NOTE.—Sections 1863, 1870, 1873, 1880, 1884, 1885, 1908 and 1926 comprise all of "An act to amend the school law of Montana," approved March 10, 1887, except the introductory clause thereof, as follows "Section 1 Chapter LV of the fifth division of the Revised Statutes of the school law of Montana be and the same is hereby amended to read as follows"

SEC. 1927. This chapter shall be known and referred to as the "Montana School Law," and no other title or reference shall be necessary.

NOTE—Act of February 13, 1874, except where otherwise specially noted.

CHAPTER CIV.

SCHOOL TEXT BOOKS.

Sec. 1928. Text books to be uniform throughout the territory.
Svc. 1929. Time of adoption limited.
Sec. 1930. Duties of publishers and dealers defined.
Sec. 1931. Method of procedure in event of failure to fulfill bonds.
Sec. 1932. Titles of text books and prices.
Sec. 1933. Price list to be publicly posted.
Sec. 1934. Use of other text books prohibited.
Sec. 1935. Duties of school officers.
Sec. 1936. Supplementary books. and prices.
Sec. 1937. This chapter may be amended or repealed.
Sec. 1938. School text book commission.
Sec. 1939. Duties of commissioners.
Sec. 1940. Duties of superintendent of public instruction and compensation of commissioners.

14th ses. p. 122
Uniform text books.

SEC. 1928. The text books in the several branches required by law to be taught in the public schools of Montana shall be uniform througout the territory.

Text books adopted for four years

SEC. 1929. School text books shall be adopted for periods of four years, and such text books, when adopted, shall be the only text books for the several branches used in the public schools of the territory, except as hereinafter provided; *Provided*, That nothing in this act shall be construed to prevent school trustees from authorizing the use of such text books supplementary to, but not to the exclusion of, the text books adopted for the territory, as the special needs of their schools may require.

Duties of publishers and dealers.

SEC. 1930. That the text books hereinafter named are hereby adopted for exclusive use in the public schools of this territory for the term of four years from the first day of July, A. D. 1885, or until changed in pursuance of law; *Provided*. That this section shall take effect only when the publishers of the books hereby adopted shall have filed with the territorial secretary their bonds with at least two sufficient sureties, to be approved by the governor, in the penal sum of ten thousand dollars for each publishing house, conditioned that they shall, for the period of this adoption, keep the said books, and each of them, for sale at wholesale in the city of San Francisco, Cal., to all merchants in this territory or to school trustees desiring to purchase the same from time time, in such quantities as may be requisite to supply their schools, at prices not exceeding the wholesale prices hereinafter named; and they shall also keep, or cause to be kept at all times during said period, the said books at retail in sufficient quantities in at least one town in each county of this territory at prices not exceeding the retail prices hereinafter named, That in case the current wholesale market rates of said books shall ever hereafter be reduced below the said wholesale prices hereinafter named, then all merchants and all school trustees desiring to purchase books for the supply of their schools shall have the benefit of such reduction, and a corresponding reduction shall be forthwith made in the retail prices guaranteed to the people of this territory; that for the period of one year from the first day of July, A. D. 1885, they will cause the said books to be sold at retail in at least one town in each county in this territory, and on the application of any school officer, they will forward the same by mail or express, carriage free, from San Francisco at the prices hereinafter named, set opposite the names of said books in the column headed "Introduction;" that they will for a period of six months from the said first day of July, A. D. 1885, in at least one town in each county of the territory exchange copies of the books hereby adopted grade for grade, for old books of other series now in the hands of pupils upon the payment in cash at the time of surrendering the old books, of the price hereinafter set opposite the names of said books in the column headed "Exchange," except the Bancroft series of readers, which shall be exchanged free by giving a new book of any grade required for an old book of any grade surrendered in any other series; that they will prepare for Harper's school geography, a full page map of Montana, from the latest compilations, engraved in the best style, together with such a reasonable and proper amount of special geography of Montana as shall be satisfactory to the territorial superintendent of public instruction, and will cause the same to be included in all copies of said geography supplied by them to the people of this territory; that they shall maintain the mechanical excellence of said books at least equal to their present standard, in respect to binding, printing, quality of paper and all other essential features; and that any of said books which require revision from time to time, and that those sold to the people of this territory, shall always be of the latest revised edition.

Publisher's bonds.

SEC. 1931. In case the publishers of the books hereby adopted shall not on or before the first day of July, A. D. 1885, file with the secretary their bonds as hereinbefore provided, or in case they shall not, on or before the first day of July, 1886, have performed all of the obligations of their bond, in respect to the introduction and exchange of books, and the preparation and supply of the special map and geography of Montana for Harper's school geography, or in case they shall at any time thereafter, violate or fail to perform any of the conditions specified in their bonds as hereinbefore provided, and shall fail, within a reasonable time after due notice, mailed to them by the territorial superintendent of public instruction, to make good their guarantee in any respect in which they may have failed, then this adoption shall become null and void, and the series of text books now in use in the schools shall remain the legal text books until changed by law; and the said books hereby adopted, upon compliance with the conditions aforesaid, shall be continued in use until otherwise provided by statute. It shall be the duty of the superintendent of public instruction to proceed by suit in the name of the territory, to enforce and collect the bond of the publishers so failing, for the benefit of the common schools of the territory.

Titles and prices of text books.

SEC. 1932. The following are the titles of the text books adopted by this act, with the introductory and exchange prices which the publishers shall be bound to maintain as hereinbefore provided, to-wit: The introductory prices for one year from and after the first day of July, 1885, and the exchange prices from said first day of July, 1885, to the first day of January, 1886, and the wholesale and retail prices which they shall be bound to maintain thereafter:

NAME OF BOOK	Wholesale prices. Ten per cent off the list prices here given in San Francisco	Retail prices.	Introductory prices.	Exchange prices
Bancroft's First Reader.	$0 18	$0 25	$0 15	....
Bancroft's Second Reader..	32	40	25	....
Bancroft's Third Reader...........	45	55	35	..... .
Bancroft's Fourth Reader.........	55	65	45	....
Bancroft's Fifth Reader.	75	90	55	. ... .
Harper's Introductory Geography......	55	75	35	25
Harper's School Geography.	1 10	1 40	80	60
Swinton's Language Primer......	28	35	21	15
Swinton's Language Lessons ..	38	45	28	30

Price list to be publicly posted.

SEC. 1933. Whenever the publishers of the books hereby adopted shall have filed their bond, as hereinafter provided, it shall be the duty of the territorial superintendent of public instruction to cause all prices of the text books, as guaranteed by the publishers, to be properly printed and distributed, through the county superintendents, to the trustees of the several school districts, who shall cause the same to be kept constantly posted in a conspicuous place in each school room in their district, and it shall be the duty of the several county superintendents to keep themselves informed as to whether such prices are actually maintained by the said publishers; and in case of failure, to at once notify the territorial superintendent, who shall then proceed as hereinbefore provided.

Use of other books prohibited.

SEC. 1934. Any school district which shall, after the first day of July, A. D. 1886, use other text books than those herein adopted for the same studies, shall forfeit twenty-five per centum of the county fund apportioned to it, and the sum so forfeited shall be reapportioned among the other school districts of the county which shall have complied with this chapter.

Duties of school officers.

SEC. 1935. All school officers and teachers are charged with the execution of this law, and the county school superintendent shall require the trustees of the several school districts, or the clerks thereof, to report annually whether the authorized text books are used in their schools.

Supplementary books and prices.

SEC. 1936. The publishing houses with which contract is made for furnishing the school books herein adopted, shall furnish at the same discount from the wholesale list of prices, all supplementary and high school books which may be required by trustees and other school officers throughout the territory, and which are published by said houses or either of them.

May be repealed.

SEC. 1937. The legislature may at any time alter or repeal this act.

Text book commission.

SEC. 1938. There is hereby created a commission, to be known as the school text book commission. Said commission shall consist of the territorial superintendent of public instruction and two other persons, one of whom shall be a practical teacher, to be appointed by the governor, by and with the advice and consent of the legislative council. They shall hold office till the end of the session of the next legislative assembly.

Duty of text book commission.

SEC. 1939. It shall be the duty of the school text book commission, during the ensuing two years, to carefully examine the school text books now in use, and to report to the next legislature what changes, if any, should be made in the present series, with their reasons in full therefor, and, in case any changes are recommended, the terms on which the books recommended can be obtained, and such other information as in their judgment may be useful to the legislature.

Duty of territorial superintendent.

Compensation of text book commissioners.

SEC. 1940. It shall be the duty of the territorial superintendent of public instruction, in behalf of the commission, to correspond with firms known as schoolbook publishers, inviting them to send samples of school text books, with the prices at which they will be supplied at wholesale. The members of the commission shall be repaid their actual expenses in traveling to and from the capital of the territory, on or before the assembly of the next legislative assembly, for the purpose of making the report contemplated in the second section of this act, and shall also be paid five dollars per day while engaged in preparing said report: *Provided*, That not more than three days' time shall be thus employed and paid for.

NOTE—Chapter CIV act of March 12, 1885

CHAPTER CV.

SCHOOL DISTRICT FUNDS AND BONDS.

[*Miscellaneous.*]

Sec. 1941. County treasurer to transfer road money to school fund in certain cases.
Sec. 1942. Authority for transfer.
Sec. 1943. How such money applied.
Sec. 1944. Proceeds of sale of town lots to constitute special school fund.
Sec. 1945. How such fund expended.
Sec. 1946. Authority to draw warrants on such fund.
Sec. 1947. Election held to authorize its application to other purposes.
Sec. 1948. Disposal of college and university town lots for school purposes.
Sec. 1949. Trustees of school districts authorized to issue bonds in certain cases.
Sec. 1950. Issuing bonds for building school houses.
Sec. 1951. Manner and form of issuing such bonds.
Sec. 1952. Notice of sale, and sale at not less than par.
Sec. 1853. Faith of school district pledged for payment of principal and interest.
Sec. 1954. Assessment to pay interest and constitute a sinking fund.
Sec. 1955. Redemption of bonds.
Sec. 1956. Payment of interest.
Sec. 1957. Printing bonds and coupons.
Sec. 1958. Penalty for neglect to pay over moneys derived from sale of bonds.

SEC. 1941. That from and after the passage of this chapter it shall be lawful, and it is hereby made the duty of the county treasurers of the several counties of Montana, to transfer any and all sums of money raised by county road tax and apportioned to certain road districts, and that shall have remained one year to the credit of any road district unused or

Transfer of certain road moneys to school fund unappropriated, to the credit of the particular school district or districts whose boundaries are coterminous or nearly so with those of the road district to whose credit said moneys were originally apportioned.

Authority for transfer.

SEC. 1942. A certificate of the road supervisor that such moneys are not needed for immediate use in building or repairing roads of his district, accompanied by the petition of ten residents of such district that such transfer be made, shall be made sufficient warrant for the county treasurer to make such transfer, and the official maps of the several road and school districts of the county shall determine the districts to which the transfers are to be made.

How money to be applied.

SEC. 1943. Moneys so received to the credit of any particular school district may be applied by the trustees thereof to the payment of any outstanding district indebtedness, or like other funds, to the ordinary expenses of the district.

NOTE.—Act of February 9, 1879.

Proceeds of sales of town lots.

SEC. 1944. That all moneys arising from the sale of town lots under and by virtue of the several acts of the legislative assembly of the Territory of Montana relating to town sites, that now is or that may hereafter come into the hands of any probate judge, or the corporate authorities of any city or town of this territory, shall be paid into the county treasury of the county for the use and benefit of the common schools of the school district in which such city or town is situated, to be used as provided for in this article.

How proceeds of town lots expended

SEC. 1495. The county treasurers of the several counties of this territory shall transfer all moneys so paid into said treasury, as provided for in section 1944 of this chapter, or that may now be in such treasury, derived from said source, to the school fund of the school district in which such town is situated, which shall be paid out on the order of the school trustees of such district, as provided for in section 1946, of this chapter; and which said moneys shall be by said treasurer set apart as a special fund for the purpose of building and furnishing school houses, and shall be used for such purpose alone, unless otherwise ordered, as provided for in this article.

Trustees may draw money for building, etc

SEC. 1946. The school trustees of any school district are hereby authorized to draw warrants on said fund named in sections 1944 and 1945 of this chapter, for the purpose of building and furnishing a school house in such place, in the town or city from the sale of lots out of which such fund arose, as they may designate, which said warrants or orders shall specify the fund on which the same are drawn, and for what purpose drawn.

Funds may be used for other purposes if election so determines.

SEC. 1947. Said fund may be used for general school purposes, if a majority of the qualified voters of such district shall so elect, and upon the written request of any fifty of the qualified voters of such district, presented to the trustees for such purpose, said trustees shall order an election for such purpose, at which election said trustees shall prepare the form of the ballot used at such election, and which election shall be given notice of and conducted as other elections provided for the several school districts under the general school laws of this territory, and that when any warrant is so drawn on said fund for other purposes than the building and furnishing a school house, said warrant shall so specify that it was pursuant to an election held for such purpose.

NOTE —Act of February 15, 1877.

Disposal of college and university town lots for school purposes.

SEC. 1948. Whenever under the provisions of the laws of this territory the probate judge of any county or the mayor of any incorporated town or city, shall have set apart as and for a site for a college or university, any lands or lots in any town site, the school trustees of any school district in which such site is situate, if they shall so elect, may take possession thereof and occupy the same, or any part thereof, for school purposes, until the same shall be needed for the uses for which it was originally set apart; and, if in the judgment of the superintendent of public instruction of the territory and the county superintendent of common schools, and the trustees of the school district in which such site is situate, such site is more appropriate and will be more useful as school grounds for the common schools than as a site for a college or a university, they shall so declare in writing, which declaration shall be recorded with the probate judge, and thereafter the said college or university ground shall belong to said school district; and if heretofore any grounds so set apart for a college or university shall have been conveyed to the superintendent of common schools of the county in which such lands are situate for the time being, such conveyance is hereby confirmed and declared valid as a trust to all intents and purposes whatsoever, and such superintendent and his successors in office are hereby declared trustees for the purpose of holding such title, and the said conveyance shall enure to him and his successors in such office in trust for the uses for which the grounds were originally set apart, but subject to the provisions of this section with reference to the district schools.

When trustees may issue bonds.

Sec. 1949. Whenever heretofore in the construction of any school house the expense of such construction and the grading and fencing the ground, and constructing outhouses and furnishing the same, shall have exceeded the estimate therefor and the amount of moneys belonging to such district applicable thereto, and the said district is in debt therefor, such district, by its trustees, may give its note or notes for the deficiency so remaining unpaid, for a period not exceeding three years, which may draw interest at a rate not exceeding eighteen per cent. per annum; or if they so elect, they may issue the bonds of such district, due at a time not exceeding six years from their issuance, which shall bear interest, payable semi-annually, at a rate not exceeding ten per cent. per annum, and they shall ascertain the tax requisite to pay the installments of interest as they become due, and a sinking fund to meet the bonds at their maturity in the manner now required under existing laws as to special tax levies of a school district, and thenceforward all laws providing for the collection of such taxes shall apply with reference thereto, but the said moneys so raised shall be under the control of the board of trustees.

Note.—Act of February 11, 1876.

13th ses. p. 64.

Bonds may be issued for building school houses.

Sec. 1950. The board of school trustees of any school district within the territory shall, whenever a majority of the trustees so decide, submit to the electors of the district the question whether the board shall be authorized to issue coupon bonds to a certain amount, not to exceed two per cent. of the taxable property in said district, and bearing a certain rate of interest, not exceeding seven per centum per annum, and payable and redeemable at a certain time, for the purpose of building or providing one or more school houses in said district and purchasing land necessary for the same. This section shall not be so construed as to authorize any such board of school trustees to submit such question of issuing bonds to the electors of any school district more than one time; nor shall the entire levy for such purpose exceed two per cent. on the taxable property of the district; and whenever the bonds of any school district, for such purpose, shall have been issued to such an amount, such question shall not be again submitted, nor shall any additional

14th ses. p. 122

bonds be issued until the entire outstanding bonds be paid. This section shall not apply to an act entitled "An act to authorize the school trustees of school district No. 1, of Deer Lodge county, to issue additional bonds for certain purposes," approved February 13, 1885.

NOTE—Last two clauses of section 1950 act of March 12, 1885

13th ses p. 64.

Manner and form of issuing bonds

SEC. 1951. Such election shall be held in the manner prescribed by section 1905 of the fifth division of the Revised Statutes [Compiled Statutes] of Montana, but the ballots shall contain the words: "Bonds, yes," or "Bonds, no." If a majority of the votes cast at such election are "Bonds, yes," the board of trustees shall issue such bonds in such form as the board may direct, and shall bear the signature of the chairman of the board of trustees, and shall be countersigned by the clerk of the said school district; and the coupons attached to the bonds shall be signed by said chairman and said clerk. And each bond so issued shall be registered by the county treasurer in a book provided for that purpose, which shall show the number and amount of each bond, and the person to whom the same is issued. And the said bonds shall be sold by the said school trustees as hereinafter provided.

Notice of sale; bonds not to be sold for less than par

SEC. 1952. The school trustees shall give notice by advertisement in some newspaper published in this territory, for a period of not less than four weeks, to the effect that the said school trustees will sell said bonds (briefly describing the same) and stating the time when, and the place where, such sale will take place; *Provided*, That the said bonds shall not be sold for less than their par value, and that the said trustees are authorized to reject any bids, and to sell said bonds at private sale, if they deem it for the best interest of the district; and all moneys arising from the sale of said bonds shall be paid forthwith, into the treasury of the county in which such district may be located, to the credit of said district, and the same shall be immediately available for the purpose of building or providing the school houses authorized by this chapter.

Faith of school district pledged.

SEC. 1953. The faith of each school district is solemnly pledged for the payment of the interest and the redemption of the principal of the bonds which shall be issued under this chapter. And for the purpose of enforcing the provisions of this act, each school district shall be a body corporate, which may sue and be sued by, or in the name of, the board of school trustees of such district.

Tax levy for interest and sinking fund.

SEC. 1954. The school trustees of each distri shall ascertain and levy annually, the tax necessar pay the interest when it becomes due and a sink fund to redeem the bonds at their maturity; and sa tax shall become a lien upon the property in sa school district, and be collected in the same manner other taxes for school purposes.

Redemption of bonds.

SEC. 1955. When the sum in said sinking fu shall equal or exceed the amount of any bond th due, the county treasurer shall post in his office notice that he will, within thirty days from the date such notice, redeem the bonds then payable, giving t numbers thereof, and preference shall be given to t oldest issue; and if at the expiration of the said thi days the holder or holders of said bonds shall fail neglect to present the same for payment, inter thereon shall cease; but the treasurer shall at all tim thereafter be ready to redeem the same on presen tion, and when any bonds shall be so purchased or deemed, the county treasurer shall cancel all bonds purchased and redeemed by writing across the fa of such bond or bonds, in red ink, the word "R deemed," and the date of such redemption.

Payment of interest.

SEC. 1956. The county treasurer shall pay out any moneys belonging to a school district the inte upon any bonds issued under this act by such distr when the same shall become due, upon the presen tion at his office of the proper coupon, which sh show the amount due, and the number of the bond which it belonged; and all coupons so paid shall be ported to the school trustees at their first meet thereafter.

Bonds and coupons to be printed or lithographed

SEC. 1957. The school trustees of any dist shall cause to be printed or lithographed, at the low rates, suitable bonds, with the coupons attached, w the same shall become necessary, and pay ther out of any moneys in the county treasury to the cr of said school district.

Penalty for failure to pay over proceeds of bonds

SEC. 1958. If any of the school trustees of district shall fail or refuse to pay into the pro county treasury the money arising from the sale any bonds provided for by this act, they shal deemed guilty of a felony, and, upon convic thereof, shall be punished by imprisonment in the ritorial penitentiary for a term of not less than year nor more than ten years.

NOTE.—Sections 1950 to 1958 inclusive, except where otherwis cially noted, act of March 2, 1883.

CHAPTER CVI.

SCHOOL TEACHERS' INSTITUTES.

Sec. 1959. When county superintendent may hold a teachers' institute.
Sec. 1960. Duty of teachers to attend.
Sec. 1961. Pay allowed during attendance.
Sec. 1962. Expenses of such institute, and how paid.

SEC. 1959. The county superintendent of common chools in any county in this territory, containing five, r more than five, organized school districts, shall hold nnually a teachers' institute, at such time and place as may be agreed upon between him and the territorial uperintendent, and such institute shall continue in sesion not less than three nor more than five days. He hall give at least thirty days notice of the time and lace of holding such institute, by publication in some ewspaper published in the county, and one written otice to each qualified teacher in the county. It shall e the duty of the territorial superintendent of public nstruction to attend the different county institutes, and n the event of his failure so to do, he shall forfeit ten ollars of his salary for each such neglect.

13th ses. p. 55.

Teachers' institutes, when same may be held

SEC. 1960. It shall be the duty of all teachers engaged in the county, and of all persons holding certifiates, either territorial or county, to attend such institute and participate in the exercises thereof; and all teachers who may have charge of schools at the time of holding the annual institute, shall adjourn their schools for the time during which the institute shall be held.

13th ses p 56

Duty of teachers to attend

NOTE.—Sections 1959 and 1960 act of March 8, 1883

SEC. 1961. All teachers who may adjourn school for the purpose of attending any annual institute shall be allowed the same pay while in actual attendance as when teaching, and the county superintendent shall certify to the number of days attendance of each teacher, and the trustees of the several districts shall count them as so many days lawfully employed.

Pay allowed during attendance

SEC. 1962. The county superintendent of common schools shall provide a building, fuel, lights, stationery, janitor's services, and all things necessary for holding the institute, and shall present an itemized account of such expenses, not to exceed twenty-five dollars, to the board of county commissioners, and it shall be paid from the school fund of the county.

Expense of institute, how paid

NOTE.—Act February 16th, 1877, except where otherwise specially noted.

CHAPTER CVII.

SEALS.

Sec. 1963. Conveyances and instruments as effectual without as with seal.

No private seal required; not applicable to municipal or corporate seals.

Sec. 1963. All conveyances and instruments hereafter executed, which by the common law or the statutes of this territory are required to be executed under seal, shall be as effectual without such seal to all intents and purposes whatsoever, as if the same had a seal attached thereto; and the same shall be interpreted as if the same were sealed, but this chapter shall not apply to municipal or other corporations which by law are required to attest their action under seal.

Note.—Act February 3, 1876.

CHAPTER CVIII.

SECRETARY OF THE TERRITORY.

Sec. 1964. Secretary to be custodian of the seal of territory.
Sec. 1965. Authority and powers of the secretary.
Sec. 1966. Required to make copies of laws, etc.
Sec. 1967. To countersign and affix seal to commissions.
Sec. 1968. Certified copies of documents received in evidence.
Sec. 1969. Fees of secretary.

13th ses. p. 117
To have custody of territorial seal.

Sec. 1964. The secretary of the Territory of Montana shall have the custody of the seal of the territory.

Note.—Section 1964 act of January 30, 1883

Authority and powers.

Sec. 1965. That the secretary of the Territory of Montana be, and is hereby, authorized and empowered to take the acknowledgment of deeds and other instruments of writing, and to administer all oaths of office and other oaths, required to be taken by any person before entering upon the discharge of the duties of any office, appointment, place or business, or any other lawful occasion, and to take affidavits and depositons concerning any matter or thing, process or proceeding, depending or to be commenced, in any court, or before any justice of the peace, or on any occasion wherein such affidavits or depositions are authorized or required by law to be taken; and for the rendition of any service by virtue of the authority and power above given, the said secretary shall be entitled to the same fees that are, or by law, may be, allowed to the clerk of the supreme court of the territory for similar services.

Required to make copies of laws, etc

SEC. 1966. The secretary of the territory shall, when required by any person or persons so to do, make out copies of all laws, acts, memorials or resolutions appertaining to his office, or in his custody, and shall attach therto his certificate, under the seal of the territory, and for which he shall be entitled to such fees and compensation as are provided in this chapter.

To countersign and affix seal to commissions.

SEC. 1967. All commissions required to be issued by the governor shall be countersigned by the secretary of the territory, who shall affix the territorial seal thereto.

Copies received in evidence

SEC. 1968. Copies of all bonds, papers, writings and documents legally deposited in the office of the governor or in the office of the secretary of the territory, and authenticated by the seal of his office, shall be received in evidence in the same manner and with like effect as the original.

NOTE—Act of January 12, 1872

Ex. ses p 11.

Fees

SEC. 1969. The fees of the secretary of Montana Territory shall be as follows:

For certificate and seal, one dollar.

For official seal and signature, without certificate, fifty cents.

For filing and approving bond, one dollar.

For each commission issued to any officer, one dollar.

For receiving and filing each certificate of incorporation, two dollars.

For recording each instrument of writing, per folio, twenty cents.

For filing each paper, fifteen cents.

For copy of any law, act or any other writing, per folio, twenty cents.

NOTE—Section 1969 act of July 22, 1879

CHAPTER CIX.

SIGNATURES AND MARKS.

Sec. 1970. Mark may take place of signature.

Mark may take place of signature.

SEC. 1970. The signature of a party, when required to a written instrument, shall be equally valid if the party cannot write, provided the person make his mark, and the name of the person making the mark being written near it, and the mark being witnessed by a person who writes his own name upon such instrument as a witness.

NOTE —Act of January 12, 1872.

CHAPTER CX.

STATISTICS.

Sec. 1971. Auditor to prepare table of statistics.
Sec. 1972. All officers to answer questions of auditor relating thereto.
Sec. 1973. Duty of assessors to collect statistics; enumeration thereof.
Sec. 1974. Duties of various officers.
Sec. 1975. Fees of various officers.
Sec. 1976. Penalties for non-performance of duties.

Auditor to prepare table of statistics

SEC. 1971. That it shall be the duty of the territorial auditor, annually hereafter, to prepare from the official reports, and from whatever other reliable sources to which he may obtain access, as full and intelligible tables of the statistics of Montana as may be in his power, and report the result of his labors to the governor, or the legislative assembly, if in session.

Officers to answer questions asked by auditor.

SEC. 1972. That in order to insure more perfect collection of the statistical information contemplated by this chapter, it shall be the duty of any territorial or county or other officer, to answer fully and promptly such special and general questions as the territorial auditor may propound in carrying out the intention of this chapter, and no person shall receive any compensation for answering such questions, except as hereinafter provided.

Duty of assessors as to staoistics.

SEC. 1973. That the several county and district assessors and deputy assessors shall annually, at the time of taking the list of personal property for taxation, take from each person, company or corporation in his own county or district, a statement of the number of acres he or they may have had the preceding year in wheat, rye, barley, corn, oats, peas, buckwheat and potatoes, and the number of bushels each produced the preceding year; the number of acres in cabbage, rutabagas, turnips and onions, and the number of pounds produced the preceding year; the number of acres of meadow in cultivation, and the number of tons of hay; the number of milch cows used in dairy, and the number of pounds of butter and cheese produced; the number of sheep and the number of pounds of wool shorn; the number of apple or fruit trees and the number of bushels of each kind of fruit produced; the number of ranches and the wages paid per month; gross receipts from placer mines and wages paid per day; number of grist mills and number of sacks of flour manufactured; number of saw mills and number of thousand feet of lumber cut; number of tan yards and number of sides of leather manufactured; number of foundries and number of tons of castings produced; number of wagons manufactured; number of carriages manufactured; number of carpenter shops and wages paid per day; number of harness and saddlery shops and value of manufactures; number of blacksmith shops and wages paid per month; number of silversmith shops and wages paid per month; number of coal mines and number of bushels taken out; number of reduction furnaces and the number of pounds of bullion produced and the value thereof; number of butcher shops and the number of beeves, calves, sheep and hogs slaughtered; number of pounds of bacon cured; number of births and deaths, and the number of deaths resulting from natural causes, and the number from violence the previous year. The assessor is hereby authorized to administer all oaths necessary to carry into effect the provisions of this chapter.

Duties of various officers

SEC. 1974. The several county or district assessors shall make return of all blanks containing statistical information, together with a full abstract of the same, to the territorial auditor, on or before November first annually; and the territorial auditor is hereby required to cause to be printed all the necessary blanks to enable the assessors to carry into effect the provisions of this chapter, and to furnish the same to the clerks of the several counties, and the clerks of the several counties are hereby required to cause to be distributed to the assessor or assessors of their respective counties the said blanks, and take a receipt for the same.

Fees of various officers.

SEC. 1975. The clerks of the several counties shall be entitled to receive each year two dollars for distributing the blanks, as provided in this chapter, out of the contingent fund of their respective counties. Each assessor shall be entitled to receive twenty cents for each blank returned to the territorial auditor, containing statistical information, out of the territorial treasury, out of any money not otherwise appropriated, and the blanks so returned shall be the voucher upon which the territorial auditor shall issue his warrant upon the territorial treasurer.

Penalty for failure of officer to perform duty.

SEC. 1976. Any assessor failing to perform his duty, as provided in this chapter, shall be deemed to have forfeited his office, and be liable to a fine of not more than four hundred, nor less than two hundred dollars. Any clerk failing to perform his duty, as provided in this chapter, shall be liable to a fine of not less than ten dollars, nor more than fifty dollars. And the territorial auditor is hereby authorized to proceed by a suit at law against any assessor or clerk violating the provisions of this chapter.

NOTE.—Act of February 12, 1874.

CHAPTER CXI.

STENOGRAPHERS.

Sec. 1977. Appointment and term of office.
Sec. 1978. Duties.
Sec. 1979. Amount ta be paid by each party in civil action.
Sec. 1980. Salary.
Sec. 1981. To note point of exception.
Sec. 1982. Repeal.

Appointment and term of office.

SEC. 1977. The judges of the district courts of the Territory of Montana may each in their discretion appoint a stenographer for each of the judicial districts of the territory. Such stenographer shall be a sworn officer of the court, and shall hold his office during the pleasure of the judge appointing him.

Duties.

SEC. 1978. It shall be the duty of every stenographer so appointed to attend the court during each term to take full stenographic notes of the testimony, and all other proceedings in the trial of every cause; and in case the judge or counsel for either party desire it he shall make a legible transcript of his notes, which shall be filed by the clerk and prescribed as a part of the files in the cause subject to the inspection and use of all parties.

Amount to be paid by each party to civil action.

Sec. 1979. In every issue of fact in civil actions tried before the court or jury before the trial commences there shall be paid into the hands of the clerk of the court, by each party to the suit, the sum of three dollars, which sum shall be paid by said clerk into the county treasury of the county where the cause is tried, to be applied upon the payment of the salary of said stenographer, and the prevailing party shall have the amount so paid by him taxed in his bill of costs, as proper disbursements.

Salary

SEC. 1980. Every stenographer appointed under the provisions of this act shall receive an annual salary of twelve hundred dollars, payable in quarterly installments, out of the contingent funds of the counties composing the district for which he is appointed according and in proportion to the number of suits entered and commenced in the district court for such counties respectively the preceding year, and it shall be the duty of the judge of such district on the first of January of each year, or as soon thereafter as may be, to apportion the amount of such salary to be paid by each county in his district on the basis aforesaid.

To note point of exception

SEC. 1981. The said stenographer, whenever any party requires the same to be done during the time of any action or proceeding, shall write down in stenographic notes the point of the exception which may be taken, or objection which may be made by any party, and thereafter the same shall be deemed to have been delivered in writing by such party to the judge of the court.

Conflicting acts repealed

SEC. 1982. That all acts and parts of acts in conflict with this act be and the same are hereby repealed.

NOTE —Sections 1977 to 1982, both inclusive, are respectively sections 1 to 6, both inclusive, and comprise all of "An act authorizing the appointment of stenographers by the district courts," approved March 10, 1887

CHAPTER CXII.

STORAGE AND COMMISSION.

Sec. 1983. Sale of commission goods for charges when and how made.
Sec. 1984. Sale to vest title in purchaser.
Sec. 1985. Balance of purchase money paid to owner.

Sale of commission goods for charges; when and how made.

SEC. 1983. That any storage or commission merchant receiving goods, wares, merchandise, or machinery from any party for storage, after keeping the same in store for the term of ninety days, may, in default of the payment of the storage or freight money on such goods, wares, merchandise, or machinery, advertise and sell the same at public auction, to the highest bidder, for cash in hand, first giving notice of the time, the terms, and place of sale, and a description of the property to be sold, by publication in some newspaper published in the county where the property may be stored; said notice shall be published at least thirty days previous to the day of sale, and shall specify the amount due on the property to be sold: *Provided*, That when a specified time has been agreed upon between the parties for the storage of said property, the same shall not be advertised until the expiration of the time agreed upon. Should there be no newspaper published in the county where such goods, wares, merchandise, or machinery are stored, then notice may be given in the nearest newspaper published thereto in some other county in Montana: *Provided*, That no more of such goods, wares, merchandise, or machinery shall be sold than is necessary to pay the charges due, together with the costs, and as shall accrue every six months thereafter.

Sale to vest title in purchaser.

SEC. 1984. That all sales under this chapter shall vest the title to all goods, wares, merchandise or machinery disposed of under the provisions of this chapter in the purchaser thereof.

Balance of purchase money to be paid to owner.

SEC. 1985. That after the expenses of sale and publication of notice of sale, the storage or commission merchant shall be authorized, out of the proceeds arising from the sale of any goods, wares, merchandise or machinery disposed of under the provisions of this chapter, to retain the amount due him for storage or freight money advanced on any such goods, wares, merchandise, or machinery, and the excess, if any, to be paid over to the party owning the goods and entitled to the proceeds thereof.

NOTE.—Act of January 12, 1872.

CHAPTER CXIII.

SUGAR FACTORY.

Sec. 1986. First sugar factory exempt from taxation.
Sec. 1987. Term "factory or refinery" defined.
Sec. 1988. Notice of intention to erect; six months in which to commence work.
Sec. 1989. Preference given to party first filing notice.

First sugar factory exempt from taxation.

SEC. 1986. The first factory or refinery for the manufacture or refining of sugar, from beet roots, or other products of the soil of Montana Territory, erected and operated in the territory of Montana, of proper construction and sufficient capacity for the production of sugar, shall be exempt from all taxation for the term of six years from the completion of such factory or refinery. The said factory or refinery shall be deemed completed at the time of manufacturing the first refined sugar.

Term "factory or refinery" defined.

SEC. 1987. The term factory or refinery used in this chapter is hereby defined to include and embrace the building or buildings, land or lands, connected therewith, not exceeding an area of 160 acres, together with all the presses, washing and grinding mills, boilers, evaporating pans, machinery, utensils, materials, and appurtenances used in or about the same, or in any wise necessarily connected therewith, and all water rights, ditches, flumes, water wheels, engines and reservoirs, and all stock, materials and products on hand unsold, whether the same be raw, manufactured or refined.

Notice of intention to erect; six months in which to commence work.

SEC. 1988. That any person, association of persons, or corporation, filing with the auditor of the territory the first notice of his, their, or its intention to erect and operate a sugar factory or refinery within two years from the filing of said notice, shall have the term of six months from the time of filing the notice aforesaid, to complete arrangements and obtain the necessary machinery and apparatus for the erection of said factory or refinery; and at or before the expiration of said six months, said person, association, or corporation, shall commence the erection of said factory or refinery, and shall prosecute the work thereupon with due diligence until the same shall be completed.

Preference given to party first filing notice

SEC. 1989. Any person, association or corporation that shall first file the notice provided for in section 1988 of this chapter, and shall proceed to erect and complete said factory or refinery, in manner provided therein, this chapter shall have the effect to give preference to such person, association or corporation, under this chapter, for the term of six months after the filing of the aforesaid notice.

NOTE —Act of February 21, 1879

CHAPTER CXIV.

SUPREME COURT.

Sec. 1990. Time of holding terms of.

Sec. 1991. Supreme court reporter to be appointed.

Sec. 1992. Duties to report decisions and publish them.

Sec. 1993. Printing and binding.
Sec. 1994. Reporter shall have copy right.
Sec. 1995. Disposition of copies furnished the territory.

Time for holding terms

SEC. 1990. That the terms of the supreme court of the territory of Montana shall be held at the seat of government of the territory on the first Monday in January and the second Monday in July of each year.

NOTE.—Section 1990 is section 1, and comprises all of "An act concerning the time of holding terms of the supreme court," approved February 5, 1887.

Appointment of reporter.

SEC. 1991. The opinion and decisions of the supreme court of this territory shall be reported by an attorney and counsellor at law, appointed by the judges of the supreme court, who shall be an officer of such court during his continuance in office.

To report and publish decisions.

SEC. 1992. The reporter shall make careful and accurate reports of all cases argued and decided by the supreme court. He shall be entitled to the possession of the original files in all cases, for a reasonable time, to prepare copies for publication. The report of such cases shall contain concise notes of the points decided, a statement of the facts taken from the record, when the same are not fully given in the opinion of the court, the names of the counsel, and the opinion of the court. He shall publish a volume of such reports as often as there is sufficient matter to form a volume of not less than six hundred pages.

Printing, binding, and price of reports.

SEC. 1993. The reporter of such volume shall print and bind two hundred copies of such edition at the expense of the territory; *Provided*, That the same shall be paid for at the rate of six dollars for each volume of six hundred pages, and that each volume of more than six hundred pages shall be paid for at the same rate, and for the number of pages exceeding six hundred, and upon the said reporter leaving at some place in New York a sufficient number of copies to enable said auditor of the territory to send one copy to each state and territory, which place and number shall be desigted by said auditor, and depositing a sufficient number of additional copies to make, with the number left, to send to the libraries of the different states and territories, two hundred copies, the said auditor shall issue to the said reporter a warrant for the amount to be found due, as in this section provided: *Provided*, That the whole expense of publication of a full volume of such reports shall not exceed the sum of fifteen hundred dollars to the territory.

NOTE.—Act of February 16, 1877.

Copyright

SEC. 1994. The reporter shall have the exclusive copyright of each volume as his own property.

Disposition of copies furnished territory.

SEC. 1995. Of the two hundred copies deposited with the territorial auditor, as above provided, the following officers shall be entitled to one copy of such volume, to-wit: the governor, secretary, territorial auditor, territorial treasurer, territorial superintendent of public instruction, the several judges of the supreme court, the several county attorneys and the judges of probate of the several counties. A sufficient number shall be sent as exchanges to the several states and territories of the Union by the territorial auditor, and the remainder shall be deposited with the territorial librarian.

NOTE.—Act of January 4, 1872, except where otherwise noted.

CHAPTER CXV.

SWINE.

Sec. 1996. Swine not to run at large part of the year.
Sec. 1997. Prohibited in certain counties at any season.
Sec. 1998. Fines and penalties for violation.
Sec. 1999. Fines to go to the school fund.

When swine not to run at large.

SEC. 1996. That hereafter it shall be unlawful for any owner or owners of swine to permit the same to run at large, from the first day of March until the first day of November.

14th ses. p. 128

At no time in certain counties.

SEC. 1997. That the owner or owners of swine are hereby prohibited from letting the same run at large, at any season of the year in the counties of Lewis and Clarke, Gallatin, Missoula, Yellowstone and Choteau, or in any town or village in any county of this territory having a population of over ten inhabitants.

Penalty for violation.

SEC. 1998. Any person or persons violating the provisions of this chapter shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in the sum of ten dollars for the first offence, and in the sum of twenty dollars for each subsequent offence, and shall be liable in damage to any party injured thereby, to be recovered in any court having competent jurisdiction.

NOTE.—Sections 1997 and 1998 act of February 21, 1885.

Fines for benefit of schools.

SEC. 1999. That all fines collected under the provisions of this chapter shall be paid into the county treasury for the use and benefit of the common schools of said county.

NOTE.—Act of February 13, 1879, except where otherwise noted

CHAPTER CXVI.

TERRITORIAL AND COUNTY OFFICER'S REPORTS.

Sec. 2000. Auditor to publish annually the auditor and treasurer's reports.
Sec. 2001. Report of county superintendent.
Sec. 2002. Report of territorial superintendent.
Sec. 2003. Publication of report of territorial superintendent.
Sec. 2004. Provision to pay for printing.
Sec. 2005. Penalty for not reporting.

Annual publication of reports of auditor and treasurer.

SEC. 2000. That on the first day of January of each year hereafter, it shall be the duty of the territorial auditor to cause to be published not less than six hundred, nor more than one thousand, copies of the auditor's and treasurer's reports to the governor, for the preceding year, in pamphlet form.

Reports of county superintendent of schools.

SEC. 2001. Each county superintendent of common schools shall, on or before the fifteenth day of December of each year, report to the territorial superintendent of public instruction the number of school census scholars between the ages of four and twenty-one years, and the number of children under the age of four years, for the current year, and the amount of school moneys collected from all sources for the fiscal year ending on the first day of December, instant.

Report of territorial superintendent.

SEC. 2002. The territorial superintendent of public instruction shall report annually—biennially to the legislative assembly, and on the first day of January, 1880, and on each alternate year thereafter to the governor—and such report shall contain an abstract of the supplemental reports of county superintendents required to be made by this chapter.

13th ses. p. 56.

Report of territorial superintendent to be published.

SEC. 2003. The territorial superintendent of public instruction shall cause to be published not less than seven hundred copies of each annual report, nor more than one thousand copies, in pamphlet form. On each alternate year he shall embody in his said report copies of the school laws, beginning with 1883.

NOTE.—Section 2003 act of March 8, 1883.

SEC. 2004. The territorial auditor shall draw his warrant on the territorial treasurer in payment for the printing done under the provisions of this chapter, in accordance with the provisions of the printing law.

Payment for printing.

SEC. 2005. Any officer required to report under the provisions of this chapter, who shall fail to report as the law directs, shall be deemed guilty of a misdemeanor, and shall be fined in any sum not less than twenty-five dollars, and not more than one hundred dollars, before any court having competent jurisdiction; the proceeds of said fines to be paid into the school fund of the county where such conviction shall be had.

Penalty for not reporting

NOTE—Act of February 21, 1879, except where otherwise noted.

CHAPTER CXVII.

TERRITORIAL SEAL.

Sec. 2006. Secretary authorized to procure new seal.
Sec. 2007. Old seal to be destroyed.

SEC. 2006. That the secretary of the territory shall cause to be made a new territorial seal for the use of his office, and the sum of twenty-five dollars, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the territorial treasury not otherwise appropriated to defray the expenses of making such seal, and the territorial auditor is hereby authorized to draw his warrant on the territorial treasurer in favor of William B. Webb, for such sum as may be found by said auditor to be due and payable on account of such expenses.

Secretary authorized to procure new seal

SEC 2007. That the secretary shall, on receipt by him of the new seal provided for in this act, caused to be destroyed, in the presence of the territorial treasurer and territorial auditor, the old seal now in his office.

Old seal to be destroyed

NOTE—Sections 2006 and 2007 are respectively sections 1 and 2, and comprise all of "An act concerning the seal of the territory," approved January 22, 1887

CHAPTER CXVIII.

TOLL FOR GRINDING GRAIN.

Sec. 2008. Rate of toll established.
Sec. 2009. Accountability of mill owner for grain and sacks.
Sec. 2010. Penalty for taking greater rate of toll.

Rate of toll established.

SEC. 2008. That the owner or occupier of any grist mill within this territory shall be entitled to the one-sixth part of all the wheat, rye or other grain ground and bolted, and to the one-eighth part of all rye, malt, buckwheat, corn, barley or peas ground or chopped, only.

Accountability of mill owner for grain and sacks.

SEC. 2009. That the owner or occupier of every mill aforesaid shall be accountable for the safe keeping of all grain received in said mill for the purpose of being ground therein, and shall deliver the same when ground, or ground and bolted (as the case may be), with the bag or bags, sack or sacks, which were delivered in said mill with the grain, to the owner when called for: *Provided*, That the bag or bags, sack or sacks, left as aforesaid, be distinctly marked with the initials and surname of the owner or owners thereof: *Provided*, *also*, That nothing herein contained shall be so construed as to charge or make accountable any owner or occupier of any mill for the loss of any grain, bag or bags, sack or sacks, which shall happen by robbery, fire or other accident without the fault or neglect of such owner or occupier, or that of any miller employed by such owner or occupier.

Penalty for taking greater rate of toll than authorized.

SEC. 2010. That if the owner or occupier of any mill, their representative, agent or miller, shall take a greater proportionate quantity of toll than is hereinbefore authorized, and be duly convicted thereof before any court having jurisdiction of the same, he or they shall be fined for every such offence in any sum not exceeding one hundred dollars, at the discretion of the court.

NOTE.—Act of February 21, 1879.

CHAPTER CXIX.

TOWN AND VILLAGE SITES AND PLATS.

Sec. 2011. Who shall enter town site under United States law.
Sec. 2012. Powers of officers entering town site.
Sec. 2013. When survey and plat to be made.
Sec. 2014. Size of lots; survey to be filed; where.
Sec. 2015. Claimants of lots to file statements—when.
Sec. 2016. Requisites of statements.
Sec. 2017. Claimants to make proof and pay fees—when.
Sec. 2018. What claimant entitled to.
Sec. 2019. Authorities to make deed; when.

Sec. 2020. Fees in non-contested cases.
Sec. 2021. Proceedings in contested cases.
Sec. 2022. Claimants may appeal—where.
Sec. 2023. When appeal decided authorities to make deed.
Sec. 2024. Claimants to make deposit upon filing.
Sec. 2025. Authorities may borrow money to defray expenses, etc.
Sec. 2026. Lots not claimed opened to settlement and entry:
Sec. 2027. Disposition of books and papers relating to town site entry.
Sec. 2028. Site for school or college set apart—when and how.
Sec. 2029. Rights of actual occupant of ground prior to passage of this act.
Sec. 2030. Construction of section 2016.
Sec. 2031. Plat or map of town or village to be made—what it shall show.
Sec. 2032. To be acknowledged, filed, etc.
Sec. 2033. Monuments to be placed, and how.
Sec. 2034. Duty of county clerk, fees, etc.
Sec. 2035. What shall be evidence in courts.
Sec. 2036. Public rights.
Sec. 2037. Additions; how surveyed and platted.
Sec. 2038. Plat to be recorded before offering lots for sale.
Sec. 2039. How vacated; effect of partial vacation.

Who shall enter town site upon public lands.

SEC. 2011. Whenever the citizens of any town located, or that may hereafter be located, upon the public lands of the Unitsd States, shall desire to obtain title to the town site thus occupied by them, it shall be lawful for the corporate authorities of such town, or if the same be unincorporated, then for the judge of the probate court of the county in which such town is located, whenever such desire of the citizens is certified to such incorporate authorities, or judge of the probate court, as the case may be, by a petition signed by a majority of the resident property holders of such town, to enter, at the proper land office, so much of the land that such town may be entitled to under the provisions of the act of congress entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, as may be actually necessary for the purposes of said town, in trust for the several uses and benefit of the occupants thereof, according to their respective interests: *Provided*, That nothing in this chapter contained shall be so construed as to authorize or empower the said incorporate authorities or probate judge, as the case may be, to enter or cause to be surveyed, as hereinafter provided, any tract or legal subdivision of land, not actually occupied as a town site, in whole or in part, by the citizens of such town: *Provided further*, That no entry of any town site under the provisions of this chapter, shall interfere with the prior rights of any person claiming any land under the homestead or preemption laws of the United States.

Powers of officers entering town site.

SEC. 2212. The said incorporate authorities, or judge of the probate court, as the case may be, shall have full power to do all and singular the several acts and things necessary and appertaining to the entry of said land at the proper land office.

When survey and plat to be made.

SEC. 2013. And the said incorporate authorities or judge of the probate court, as the case may be, shall, within three months from and after the entry of such town site, unless a survey and an accurate plat thereof has previously been made, cause the same to be surveyed and a plat thereof made, which said survey and plat thereof shall conform as near as may be to the existing rights, interest, and claims of the occupants thereof. Said plat and survey shall be submitted to and accepted by the board of county commissioners in the county where the said town is situated.

Ex ses. p. 15.

Size of lots; where surveys to be filed.

SEC. 2014. Such townsite shall be surveyed into blocks, lots, streets and alleys, but no lot shall exceed in area four thousand two hundred square feet; and the plat of such town site, together with the field notes of the survey, verified by the affidavit of the surveyor who made such survey, shall, after the same has been accepted by the board of county commissioners, be filed in the office of the county recorder of the county in which such town is situated, and thereafter the streets and alleys designated in such plat shall be and remain dedicated to the public use; but the county commissioners of the county wherein such town is situated, if the said town is not incorporated, shall have authority to alter or vacate any such street or alley, or to lay out, open and establish other streets and alleys in said town in the same manner and upon the same conditions as is provided by law for the establishment of a county road. If such town is incorporated, then such streets and alleys may be altered, vacated or established in such manner as the corporate authorities thereof shall by ordinance provide. Such survey may also include one or more public squares, and if such town is stiuated upon a navigable stream, a levee fronting thereon, which, when so designated on such town plat, shall, in like manner, be and remain dedicated to the public use; and such public square or levee, after having been so established, shall not be vacated, except upon a vote so to do by a majority of the legal voters of such town, at a general or special election held at least thirty days after a proposition to vacate such square, or some part thereof, shall have been submitted to them by the board of county commissioners, or corporate authorities, as the case may be.

NOTE—Section 2014 act of July 22, 1879

Claimant of lots to file statement, when

SEC. 2015. Immediately after such survey and plat has been made, or if a survey and plat has been made previous to the entry, according to the provisions of section 2013, of this chapter, then immediately after the entry of the lands at the proper land office, as provided in section 2011, of this chapter, the corporate authorities or the probate judge, as the case may be, shall cause a notice to be published in all the newspapers published in such town, or, if no newspaper be pulished in such town, then by advertisement posted up in twelve of the most public places in such town, for at least two months, giving notice of such entry, and requiring every claim- or claimants of any town lot or lots, to file in the office of such incorporate authorities or probate judge, as the case may be, a statement of his or their claims within two months from the date of the first publication of such notice.

Requisites of statement

SEC. 2016. Such statement shall be made in writing, signed by the party or parties making the same, and verified by the affidavit of such party or parties, and shall be recorded at length in a well bound book to be provided and kept for such purpose by such incorporate authorities or judge of probate, as the case may be. Such statement shall specify the grounds of such claim, particularly describing the lot or lots claimed, the date as near as may be of the occupation of said lot or lots, and by whom: what improvements have been made on said lot or lots and the value thereof; and that such lot or lots are now actually possessed and occupied by such claimant, or that the right to such occupation is in the claimant, if such lot or lots are occupied by another.

When claimant to make proof and pay fees

SEC. 2017. All claimants of any lot or lots in any town site pre-empted under the provisions of this chapter shall, within six months from and after the expiration of the notice mentioned and provided for in section 2015 of this chapter, make proof of such claim and of the facts contained in such statement, before the corporate authorities aforesaid, or the probate judge, as the case may be, and pay the price hereinafter fixed upon such lot or lots; and no proof shall be permitted to be made after the expiration of the time prescribed in this section.

Number of lots to which claimant entitled.

SEC. 2018. The number of lots which any one claimant shall be entitled to pre-empt, under the provisions of this chapter, shall be two, not exceeding in area four thousand two hundred square feet each, and such additional lot or lots upon which said claimant may have substantial improvements of the value of not less than two hundred and fifty dollars. When any claimant shall make application to enter more than two lots, he shall prove, in addition to other matters of proof required by this chapter, to the satisfaction of said incorporate authorities or probate judge, as the case may be, by the affidavit of one or more reliable witnesses, the nature, character, and actual cash value of the improvements upon such additional lot so sought to be entered by him.

When deed to be made

SEC. 2019. The said probate judge or corporate authorities, as the case may be, shall proceed to award the lot or lots claimed as provided for in this chapter, and for that purpose shall, as soon as practicable, and as near as practicable in the order of time of the filing of statements of claims, examine each and every claim as herein provided, and hear such proof as the claimant or claimants may submit to establish his or their claims thereto; and, if the same shall be found to comply with the provisions of this chapter, and no conflicting claim shall have been filed, the said probate judge or corporate authorities, as the case may be, shall, upon payment of the fees hereinafter prescribed, proceed forthwith to make to such claimant or claimants a good and sufficient deed for such lot or lots.

Fees

SEC. 2020. The fees of the probate judge or corporate authorities shall be, in case such claim or claims is not contested, four dollars for hearing the proof and making the deed; and in contested cases, in addition to the four dollars, the same fees as allowed by law in civil cases in justices' courts.

Proceedings in contested cases.

SEC. 2021. In all cases where there is a dispute or contest in regard to the right to the deed to any lot or lots, the probate judge or corporate authorities, as the case may be, shall hear the testimony relating thereto at such time as they may fix therefor, and after two days' notice of such time and place of hearing given to each and every contestant, they shall proceed to hear and decide such claims, in accordance with the principles of right and justice and the provisions of this chapter; and in case there shall be no appeal taken from such decision, as hereinafter provided, then after ten days from the rendering of such decision, the said probate judge or corporate authorities, as the case may be, shall proceed to make a deed, as provided in section 2019 of this chapter, to the person or persons to whom the lot or lots may have been awarded: *Provided*, The corporate authorites or judge, as the case may be, may adjourn from time to time, as they may deem just, for the fair adjudication of said claim or claims.

Appeal.

SEC. 2022. In case any claimant or claimants of any lot or lots which may have been awarded as provided in the last section shall feel aggrieved by such decision, such claimant or claimants may take an appeal to the district court of the county in which the same is located. Such appeal may be made by filing with the judge or corporate authorities, as the case may be, a notice in writing of such appeal, and also a copy of such notice with the clerk of the district court; and a complaint in the nature of an action for the recovery of the possession, or if the party be in possession, to establish his right to the same; and a copy of such notice and complaint shall be served upon each and all of the parties contesting; and in all respects the pleadings and proceedings thereafter shall be governed by the same rules applicable to actions originally commenced in the district court.

When appeal decided authorities to make deed.

SEC. 2023. When notice of appeal to the district court shall have been filed with the probate judge or corporate authorities, as the case may be, the power to make a deed as provided in section 2019 of this chapter shall be suspended until the appeal be dismissed or finally determined; and upon such dismissal or final determination, such judge or corporate authorities aforesaid shall make a deed to the party found by such determination to be entitled thereto.

Claimant to make deposit on filing.

SEC. 2024. Each claimant shall deposit with the probate judge or corporate authorities, as the case may be, at the time of filing his statement, as aforesaid, the sum of ten dollars for each lot claimed, as the purchase money thereof, which shall be immediately deposited with the county treasurer, if the probate judge be the trustee, and with the city treasurer if the corporate authorities be the trustee.

14th ses p 129.

Authorities may borrow money.

SEC. 2025. For the purpose of raising funds to defray the expense incurred in entering, surveying anh platting said townsite, the citizens petitioning for the same, as provided in section 2011 of this chapter, shall deposit with the county treasurer, prior to the time of filing of such petition, a sum of money sufficient to defray the expenses thereof: *Provided*, That after a sufficient sum of money has been realized out of the sale of any lots sold by the probate judge or corporate authorities to defray such expenses, the money so deposited with the county treasurer shall be by him refunded to such petitioners.

NOTE.—Section 2025 act of March 5, 1885.

Lots unclaimed open to settlement and entry.

SEC. 2026. The residue of lots in the possession of the corporate authorities, or probate judge, as the case may be, and unclaimed after the expiration of sixty days, it shall be the duty of the probate judge or corporate authorities, as the case may be, to post up notices, or cause the same to be done, in at least four public places in the county in which such town site is located, at least ten days before sale, that he will offer and sell at public sale all of, or so many as he may think proper, of the lots that may remain unclaimed at the time advertised; and that all lots, having been thus advertised and offered for sale, not bringing at least the minimum price as set forth in an act of which this is amendatory, shall be subject at any time thereafter, to private entry at the minimum price.

Books, etc., to be turned over to successor.

SEC. 2027. That whenever the term of office of any officer authorized by this chapter to make entry of a town site shall expire, or he shall resign or be removed from office, he shall turn over all books and papers relative to such entry to his successor in office, and thereafter the said trust shall be dischared in every particular by such successor.

When and how site for school or college to be set apart.

SEC. 2028. It shall be the duty of the corporate authorities or county judge, as the case may be when any town site has been located and surveyed under the provisions of this chapter, upon the petition of ten resident householders of said town site, to locate and set apart, by and with the advice and approval of the board of school directors of the district in which said town site may be located, a site for a district school, not more than one acre, and the said county judge or corporate authorities shall convey by deed to said board of directors the lots included in said ocation, and said board shall manage the same as other school property of the district is managed. And upon the petition of twenty resident householders, as aforesaid, the probate judge or corporate authorities, with the advice and approval of the county superintendent of the county in which said town site is located, shall set apart a site for a college or university, not to exceed twenty acres, and the said location shall be held in trust by the county judge or corporate authorities for said college or university: *Provided*, Said locations shall not include any lot held by a *bona fide* claimant, nor interfere with vested rights.

Rights of prior actual occupants of ground.

SEC. 2029. That if any portion of said city or town shall fall upon surveyed public lands, which have hitherto been occupied and improved by any person or persons holding and occupying the same in good faith, prior to the passage of said act entitled "An act relative to the pre-emption of town sites upon public lands, and the disposal of trusts created thereby," it shall be the duty of the corporate authorities or probate judge as the case may be, if the petition aforesaid shall have been presented to him in pursuance of the provisions of said act, to enter said land in conformity to the legal subdivisions thereof, as authorized by act of congress of the second of March, 1867, and an act to amend the same, approved June 8, 1868, and, upon the payment to him of the price paid in entering the same, and such other costs and expenses as are necessarily incurred by virtue of the provisions of this chapter, to make and deliver to the said occupant or occupants, as the case may be, a good and sufficient deed for the ground occupied by them.

Construction of section 2016.

SEC. 2030. That section 2016 of this chapter be so construed as to embrace and apply to only such portion of any legal subdivision as shall be outside of the limits of ground actually occupied by the inhabitants of such town.

NOTE.—Act of January 12, 1872, except where otherwise noted.

13th ses p 39
Plat of town or village to be made, what same shall show.

SEC. 2031. Whenever any city, town or village shall be laid out, the proprietor or proprietors of the city, town, or village, or addition laid out, shall cause to be made an accurate plat or map thereof, setting forth:

First. All streets, alleys, avenues, and highways, and the width thereof.

Second. All parks, squares and all other grounds reserved for public uses, with the boundaries and dimensions thereof.

Third. All lots and blocks, with their boundaries, designating such lots and blocks by numbers, and giving the dimensions of such lots.

13th ses. p. 39.

Plat to be acknowledged, filed, etc.

SEC. 2032. All such maps or plats shall be acknowledged by the proprietor, or some person for him, duly authorized by deed before some officer authorized to take the acknowledgment of deeds, and a copy thereof, so acknowledged, shall be filed in the office of the clerk of the county, and also in the office of the clerk of such city or town, if said town be incorporated, and all such plats shall be sworn to by the surveyor executing such survey, before some person authorized to administer oaths in the Territory of Montana, such oath to state the width of all the streets and alleys, and that such town or addition has been laid out according to the map so acknowledged.

How monuments to be placed.

SEC. 2033. There shall be two or more stone monuments placed at points to be designated by the surveyor, to serve as a guide for future reference, and from which to make additions to the town, or to resurvey any portion of it, and the points where the same may be located shall be designated on the plat. Said monuments must be placed a sufficient depth in the ground to prevent being disturbed.

Duty of county clerk; fees, etc.

SEC. 2034. The clerk of the county shall file all such plats and place them in a book to be kept by him for that purpose. The paper upon which such plats are made shall not exceed in size thirty by thirty-six inches. The clerk of the county in whose office the same is filed shall certify thereon the day and hour upon which the same was so filed for record, and shall preserve the same by pasting such plats into the book kept by him for such purpose, with gummed stubs suitable therefor, and the preservation of such plats in the manner aforesaid shall be deemed of sufficient record of such town plat. The fee of the clerk of the county in which such plat shall be recorded, shall be, for placing the same on record, ten dollars.

Evidence.

SEC. 2035. All such original plats, or the record thereof, or copies therefrom, together with all certificates and acknowledgments thereon, certified by the clerk having custody thereof, shall be evidence in all courts and places.

Public rights.

SEC. 2036. Upon the filing of any such map or plat the fee of all streets, alleys, avenues, highways, parks and other parcels of ground reserved therein to the use of the public, shall vest in such city or town, if incorporated, in trust for the uses therein named and expressed; or if such town be not incorporated, then in the county until such town shall become incorporated, for the like uses.

SEC. 2037. All additions to any city or town shall be so surveyed and platted that the streets of such addition shall conform to and be extensions of the streets of the original town, or as near as may be, in the same direction, unless, in the judgment of the town council, if such there be, and if not, then the county commissioners, a change is desirable.

Additions; how surveyed and platted.

SEC. 2038. Said plat must be recorded before any lots or blocks in said city, town or addition, are offered for sale, except when thirty acres or more shall be platted, then ninety days' time shall be given for recording such town plat or addition, and for all such lots or blocks sold or leased after ninety days, and until such a time as said plat is recorded, the proprietor or proprietors of any town site, addition or any part thereof, shall forfeit and pay for each lot so sold or leased, a penalty of not less than ten dollars and not more than fifty dollars. Such penalty may be recovered in a suit brought in the name of the people of the Territory of Montana against such person or persons so offending, and such penalty, when recovered, shall be paid into the county treasury of the county wherein the premises are situated, for the benefit of the common school fund.

Plat to be recorded before offering lots for sale.

SEC. 2039. The proprietor or proprietors of any city, town, village, or any addition thereto, or any part thereof, or his or her heirs or assigns, may at any time before selling or conveying any lots or parts of lots therein, or upon reacquiring all lots or parts of lots, which may have been sold by his or her writing, under his or her hand and seal acknowledged in like manner as deeds are required to be acknowledged, and filed in the office of the clerk of the county wherein such town is situated, declare the plat or map thereof vacant, and such declaration shall have the effect to divest all rights of the city, town, village, or the county, or the public, in or to any lots or lands within the limits of such plats, and to vacate and annull such map or plat; and upon a partial vacation of such town or addition, such streets, alleys and other places as by the terms of this act vest in the town or county for the use of the public as have sole reference to the part vacated, to be selected and designated by the town council, if the town be incorporated, and if not, then by the county commissioners, shall revest in the proprietor or proprietors of the part so vacated.

How vacated; effect of partial vacation.

NOTE.—Sections 2031 to 2039, both inclusive, act of February 19, 1883.

CHAPTER CXX.

TREE PLANTING AND ARBORICULTURE.

Sec. 2040. The third Tuesday of May designated as Arbor day; Proclamation of governor.
Sec. 2041. Increased valuation not to be taxed.
Sec. 2042. Reduced assessment by reason of tree culture.
Sec. 2043. Same.
Sec. 2044. Same.
Sec. 2045. Same.
Sec. 2046. Duty of assessor; limitation of reduction in assessment.
Sec. 2047. Duty of county clerk.
Sec. 2048. Recovery for damages by animals to trees.
Sec. 2049. Takes affect from passage.

Arbor day designated; governor to make proclamation

SEC. 2040. That for the puropse of advancing the interests of tree planting and arboriculture in this territory, the third Tuesday of May is hereby designated as arbor day, and it shall hereafter be proper for the governor to annually make his proclamation setting the same apart as a day for the planting of trees, beautifying homes, cemeteries, highways, public grounds and landscapes; those who teach in public schools shall direct and train the thoughts of the youth in tree planting and decorating by practical observance of that day.

Increased valuation not to be taxed.

SEC. 2041. Whenever the owner or occupant of land within this territory has, or shall hereafter plant, any fruit or forest trees, there shall be added no increased valuation in the assessment of said land by reason of the gain in value that may be acquired by said planting and cultivation, within a period of ten years.

Reduction in assessment.

SEC. 2042. That any person who is a resident of this territory who shall hereafter plant and suitably cultivate for two years one or more acres of land in fruit trees, he shall, for the next eight years following thereafter, receive annually a reduction or exemption from his assessment of one hundred dollars for each acre so planted, and as long as the same be kept in growing condition: *Provided*, That the trees planted shall not be more than thirty-three feet apart.

Same.

SEC. 2043. That whenever any person who is a resident of this territory, and who shall hereafter plant and properly cultivate for two years one or more acres of said land in forest trees, he shall, for the next six years following thereafter, have and receive annually a reduction or exemption of one hundred dollars for every acre of trees planted: *Provided*, That said trees shall stand not more than nine feet apart and shall so long be kept in good growing condition.

Same.

SEC. 2044. That each person having no real estate living upon homesteads under the act of congress, shall be allowed for each acre of trees cultivated under this act fifty dollars exemption from his tax assessment annually for five years.

Same.

SEC. 2045. That whenever any resident of this territory has, or may hereafter plant or cultivate for two years a line of forest trees, not less than sixteen feet apart, and not more than eight feet from any highway npon which his land may border, or along water ditches within his land, said land shall be exempt from taxation to the amount of one dollar annually thereafter on the assessed valuation of such land for each growing tree thereon for a period of five years.

Duty of assessors; limitation of reduction in assessment.

SEC. 2046. The assessors of the several counties shall, in making up their lists of taxable property, enumerate the number of acres of trees grown by such person, and the number of trees as provided in section 2045 of this act, and any person feeling aggrieved at the return so made may appear before the county commissioners of his county at any meeting of said board to have the same corrected, in the same manner as the correction of assessments: *Provided*, That in no case shall there be allowed an exemption or reduction of more than five acres upon each eighty acres of land.

Duty of county clerk.

SEC. 2047. The county clerks shall enter the name of the grower of trees, the number of trees, and acres of trees upon the tax book, and shall annually, in the month of November, transmit a statement showing the number of trees and amount of exemptions to the territorial auditor, who shall embody a complete statement thereof by counties in his report to the governor.

Recovery of damages done by animals.

SEC. 2048. In case of any damage done to planted trees by domestic animals, the owner of said trees may recover full damage from the owner of the animals: *Provided*, said trees are planted inside of a lawful fence or boxed to a height of not less than five feet.

Takes effect from passage.

SEC. 2049. This act shall take effect and be in force from and after its passage.

NOTE.—Sections 2040 to 2049, both inclusive, are respectively secions 1 to 10, both inclusive, and comprise all of "An act to encourage tree-planting and arboriculture in Montana," approved Februrry 28, 1887.

CHAPTER CXXI.

WAGE WORKERS—PROTECTION OF.

Sec. 2050. Wages of employes; preferred claims in case of assignment.
Sec. 2051. Priority of claim of employe against estate of deceased person.
Sec. 2052. Execution; attachment, etc., subject to lien of employe.
Sec. 2053. Proceedings if claim of employe disputed.
Sec. 2054. What liens not affected.
Sec. 2055. Conflicting acts repealed.

Wages of employes are preferred claims in case of assignment.

SEC. 2050. That in all assignments of property made by any person, association, corporation, co-partnership, chartered company or corporation, to trustees or assignees on account of inability of assignor at the time of the assignment to pay his or their debts, or in proceedings in insolvency the wages of the miners, mechanics, salesmen, servants, clerks or laborers employed by such assignor for services rendered within sixty days immediately previous to such assignment, not to exceed two hundred dollars for each person, are preferred claims and must be paid by such trustees or assignees before any other creditor or creditors of such assignor.

Priority of claim of employe against estate of deceased person.

SEC. 2051. In case of the death of any employer, the wages of each miner, mechanic, salesman, clerk, servant or laborer for services rendered within the sixty days next preceding the death of the employer, not exceeding two hundred dollars, shall rank in priority next after the funeral expenses, expense of the last sickness, the charges and expenses of administration upon the estate, and the allowance to the widow and infant children, must be paid before other claims against the estate of the deceased person.

Execution, attachment, etc., subject to lien of employe.

SEC. 2052. In case of executions, attachments and writs of a similar nature, issued against any person, corporation, association, co-partnership or chartered company, except for claims for labor done, any miners, mechanics, salesmen, servants, clerks or laborers who have claims against the defendant for labor done, may give notice of their claims and the amount thereof, sworn to by the person making the claim, to the parties plaintiff and defendant to the action in which such execution, attachment or other writ has been issued, and upon the officer executing the same. Service of notice herein required may be made upon the officer charged with the execution of such writ in one or more cases that may be pending against such person, who shall forthwith serve such notice and claim, by copy, upon the said parties, plaintiff and defendant, if found in the county where such action is pending, or upon their respective attorneys employed in such case or cases pending.

The officer thus serving said notice and claim shall forthwith, after such service of the same, make return thereof, showing such service, where and how made. Service of such notice and claim may be made in any case at any time before the actual sale of the property levied upon in such pending action, and unless such claim is disputed by the debtor or a creditor or party plaintiff, such officer must pay such person out of the proceeds of the sale the amount each is entitled to receive for services rendered within the sixty days next preceding the levy of the writ not exceeding two hundred dollars. If any or all of the claims so presented, and claiming preference under this section, are disputed by either the debtor or a creditor, the person presenting the same must commence an action within ten days after notice of such dispute is served upon such claimant as provided for in the next section for the recovery thereof, and must prosecute his action with due diligence, or be forever barred from any claim of priority of payment thereof; and the officer shall retain possession of so much of the proceeds of the sale as may be necessary to satisfy such claim and costs until the final determination of such action; and in case judgment be had or the claim, or any part thereof, carrying costs, the costs taxable therein shall likewise be a preferred claim, which may include a reasonable attorney's fee, to be taxed by the court in case the court finds such claimant was clearly entitled to his said claim, and that the opposition thereto made by any debtor or creditor caused needless litigation.

Proceeding if claim of employe disputed.

SEC. 2053. The debtor or creditor intending to dispute any wage worker's claim presented under the provisions of the last section, shall, within ten days after receiving notice of such claim, serve upon the claimant and officer executing such execution, attachment or other writ, a statement in writing, verified by the oath of the debtor or person disputing such claim for services, setting forth that no part of said claim, not exceeding a sum specified, is justly due from the debtor to the claimant for services rendered within the sixty days next preceding the levy of the execution, attachment or other writ, as the case may be. If the claimant bring suit on a claim which is disputed in part only, and fail to recover a sum exceeding that which was admitted to be due, he shall not recover costs, but costs shall be adjudged against him; and where such claimant fails to bring suit upon his claim, which is disputed in part only, he shall have been deemed to have waived that portion of his claim disputed.

Certain liens not affected.

SEC. 2054. Nothing in this act shall be construed so as to affect any lien, encumbrance or mortgage held by any creditor of such employer prior to said sixty days.

Conflicting acts repealed.

SEC. 2055. That all acts and parts of acts in conflict with this act are hereby repealed.

NOTE.—Sections 2050 to 2055, both inclusive, are respectively sections 1 to 6, both inclusive, and comprise all of "An act to protect the wages of wage workers," approved March 3, 1887.

CHAPTER CXXII.

WEIGHTS AND MEASURES.

Sec. 2056. Lawful standard of weights and measures.

Sec. 2057. Definition of weight of "ton."

Sec. 2058. Weight of a bushel.

Sec. 2059. Duties of county commissioner and treasurer.

Sec. 2060. Weights and measures to be compared with standards.

Sec. 2061. Appointment of inspector; bond.

Sec. 2062. Fees of inspector—how regulated.

Sec. 2063. Inspector to provide tools, marks, etc.

Sec. 2064. Penalty for using other than standard weights and measures.

Sec. 2065. Violation of this act—duty of inspector.

Sec. 2066. Appropriation of fines.

Lawful standard of weights and measures.

SEC. 2056. That the weights and measures accepted and used by the government of the United States at the present time, except as hereinafter provided, shall be deemed the lawful standard weights and measures of the people of this territory.

Weight of "ton" defined.

SEC. 2057. The "ton" shall be twenty hundred pounds weight avoirdupois, except in the article of mineral coal, when it shall be deemed to express the conventional quantity of twenty-eight bushels.

Weight of bushel.

SEC. 2058. Sixty pounds of wheat, fifty-six pounds of rye, fifty-six pounds of Indian corn, forty-eight pounds of barley, thirty-five pounds of oats. sixty pounds of potatoes, sixty pounds of beans, sixty pounds of clover seed, forty-five pounds of timothy seed, forty-four pounds of hemp seed, fifty-two pounds of buckwheat, fourteen pounds of bluegrass seed, fifty pounds of corn meal, fifty-seven pounds of onions, and fifty pounds of turnips, carrots, beets, and parsnips each, salt, fifty pounds, respectively, shall be the standard weight of a bushel of each of such articles.

Temporary standard.

SEC. 2059. It shall be the duty of the board of county commissioners of the several counties of this territory to provide and adopt a temporary standard of weights and measures, until such time as they shall be notified of the arrival and acceptance of the standard to be furnished by the government of the United States to the treasurer, as provided in said section.

Weights and measures to be compared with standard.

SEC. 2060. That all venders and traders in goods and merchandise, gold dust, and other articles of traffic, shall, within sixty days after the reception of the standard by said county commissioners, have their balances, weights and measures compared with said standards of their respective counties, and approved and marked by the county inspector, and if the same are found to be correct to be sealed with the name or initial letters of the county inscribed thereon, or condemned by him if found incorrect.

Appointment and bond of inspector.

SEC. 2061. That on the first regular meeting of the board of county commissioners in each county in this territory after the passage of this chapter, and thereafter annually on the first regular monthly meeting of every year, said county commissioners shall appoint a fit and proper person, who shall be styled "inspector of weights and measures," and give bond to the county for the faithful perpormance of the duties of his office, as said county commissioners may direct.

Fees of inspector.

SEC. 2062. That every board of county commissioners shall make out a list of fees to be charged by said inspector. Such fees shall be recoverable as othet debts of like amount.

Inspector to furnish tools, marks, etc.

SEC. 2063. That it shall be the duty of such inspector to provide, at his own expense, all the necessary tools, marks and brands which he may require, and by reason thereof he shall receive no larger fee than he may be allowed in accordance with the preceding [section]. Said fees shall be paid by the parties having weights and measures sealed and approved.

Penalty for using other than standard weights and measures.

SEC. 2064. All persons who shall, after the expiration of the time before mentioned, in any county where such inspector shall have been appointed, use within this territory, for the purpose of weighing or measuring any goods, wares, merchandise, gold dust, or other article of traffic actually sold by him, any weights or measures which shall not be approved and sealed by the inspector, shall be guilty of a misdemeanor, and, upon conviction thereof, may be imprisoned not exceeding one year, or fined not exceeding one thousand dollars, in the discretion of the court in which the conviction shall be obtained.

Inspector to file complaint against offender.

SEC. 2065. Whenever it shall come to the knowledge of the inspector that any person or persons within his county have violated any of the provisions of this chapter, it shall be his duty to enter a complaint against him or them before some court of competent jurisdiction, to the end that the offender may be punished and fined according to law.

Fines paid into county treasury.

SEC. 2066. All fines imposed and collected for violation of the provisions of this chapter shall be paid into the county treasury for the use of the people of the county in which the offense has been committed.

NOTE.—Act January 12, 1872.

CHAPTER CXXIII.

WOOLEN FACTORIES.

Sec. 2067. First factory exempt from taxation.
Sec. 2068. Term "woolen factories" defined.
Sec. 2069. Notice of intention to erect.
Sec. 2070. Preference given to party first filing notice of intention to erect.

First woolen factory exempt from taxation.

SEC. 2067. The first woolen factory that shall be erected and operated in the territory of Montana of proper construction and sufficient capacity for the production of flannels and blankets, shall be exempt from all taxation for the term of six years from the date of the completion of such factory; the said factory shall be deemed completed at the time of manufacturing the first fabric.

Term "woolen factory" defined.

SEC. 2068. The term "woolen factories," used in this chapter, is hereby defined to include and embrace the building or buildings and land connected therewith, together with all machinery used in or about the same, or in any wise necessarily connected therewith, and all water rights, ditches flumes, reservoirs, and all stock on hand unsold, whether the same be raw or manufactured.

Notice of intention to erect factory.

SEC. 2069. That any person or corporation filing with the auditor of the territory the first notice of his or their intentions to erect and operate a woolen factory within two years from the date of filing said notice, shall have the term of six months from the time of filing the notice aforesaid to complete arrangements and obtain the necessary machinery for the erection of said factory; and at or before the expiration of the said six months said person or corporation shall commence the erection of said factory and shall prosecute the work thereupon with due diligence until the same shall be completed.

Preference given to first party filing notice.

SEC. 2070. Any person or corporotion that shall first file the notice provided for in section 2069 of this chapter, and shall proceed to erect and complete said factory in manner provided therein, this chapter shall have the effect to give preference to such person or corporation under this chapter for the term of six months after the date of filing the aforesaid notice.

NOTE.—Act of February 14, 1877.

CHAPTER CXXIV.

REPEAL PROVISIONS.

Sec. 2071. What the compiled statutes embrace.
Sec. 2072. Repeal of acts embraced in compilation.
Sec. 2073. Accrued rights reserved.
Sec. 2074. Prosecutions and punishments.
Sec. 2075. Acts of limitation.
Sec. 2076. Arrangements and classification of sections.
Sec. 2077. Acts passed since January 10th, 1887, not affected.

What embraced in the Compiled Statutes.

SEC. 2071. The foregoing five divisions, to-wit: First division, entitled "Code of Civil Procedure;" second division, entitled "Probate Practice Act;" third division, entitled "Criminal Practice Act;" fourth division, entitled "Criminal Laws;" and fifth division, entitled "General Laws," embrace the statutes of the territory of Montana, general and permanent in their nature, in force on the tenth day of January, A. D. one thousand eight hundred and eighty-seven, and the same shall be designated and cited as the "Compiled Statutes of Montana."

NOTE.—Sections 1307 to 1318, both inclusive, of this division.

Prior acts repealed.

SEC. 2072. All acts of the legislative assembly passed prior to the said tenth day of January, A. D. one thousand eight hundred and eighty seven, any portion of which is embraced in any section of said compilation, are hereby repealed, and the section applicable thereto shall be in force in lieu thereof, all parts of such acts not contained in such compilation having been repealed or superseded by subsequent acts, or not being general and permanent in their nature: *Provided*, That the incorporation into said compilation of any general and permanent provision, taken from an act making appropriations, or from an act containing other provisions of a private, local, or temporary character, shall not repeal or in any way affect any appropriation, or any provision of a private, local or temporary character contained in any of said acts, but the same shall remain in force; and all acts of the legislative assembly passed prior to or on said last named day, no part of which are embraced in said compilation, shall not be affected or changed by its enactment.

NOTE.—See section 1307 to 1318 of this division.

Accrued rights preserved.

SEC. 2073. The repeal of the several acts embraced in said compilation shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil. cause before the said repeal; but all rights and liabilities under said acts shall continue and may be enforced in the same manner as if said repeal had not been made; nor shall said repeal in any manner affect the right to any office or change the tenure thereof.

Prosecutions and punishments.

SEC. 2074. All offences committed, and all penalties or forfeitures incurred, under any statute embraced tn said compilation prior to said repeal, may be prosecuted and punished in the same manner, and with the same effect, as if said repeal had not been made.

Acts of limitation.

SEC. 2075. All acts of limitations, whether applicable to civil causes and proceedings, or to the prosecution of offences, or for the recovery of penalties or forfeitures embraced in said compilation, and covered by said repeal, shall not be affected thereby, but all suits, proceedings, or proceedings, whether civil or criminal, for causes arising, or acts done or committed, prior to said repeal, may be commenced and prosecuted within the same time as if said repeal had not been made.

Arrangement and classification of sections.

SEC. 2076. The arrangement and classification of the several sections of the compilation have been made for the purpose of a more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by reason of the title, title of the chapter, or title of the article under which any particular section is placed.

SEC. 2077. The enactment of the said compilation is not to affect or repeal any act of the legislative assembly passed since the tenth day of January, A. D. one thousand eight hundred and eighty-seven, and all acts passed since that date are to have full effect as if passed after the enactment of this compilation; and so far as such acts vary from, or conflict with, any provision contained in said compilation, they are to have effect as subsequent statutes, and as repealing any portion of the compilation inconsistent therewith.

Certain acts not affected.

Approved March 1, 1887.

SPECIAL LAWS.

An Act to provide compensation for Samuel Snyder for certain services, and authorizing the county commissioners of the counties of Fergus and Meagher to audit and allow the same.

Be it enacted by the legislative assembly of the Territory of Montana.

SECTION 1. That the board of commissioners of the County of Fergus is hereby authorized and directed to audit and allow to Sanuel Snyder, out of the general fund of said county the sum of five hundred dollars for his services in making a separate assessment of property for taxation in said County of Fergus for the year 1886; for money expended by him for office rent for the assessor for the County of Meagher, for the years 1885 and 1886, and for traveling expenses in going to and from St. Paul, Minnessota, on business connected with the assessment for the year 1886.

SEC. 2. That the board of commissioners of the County of Meagher is hereby authorized and directed to audit and allow to Samuel Snyder out of the general fund of said county the sum of seven hundred dollars, moneys expended by him for and on behalf of said County of Meagher for office rent for the assessor of said county for the years 1885 and 1886 and for traveling expenses in traveling to and from the city of St. Paul, Minnesota, on the business of said County of Meagher, and for his services in making a separate and distinct assessment of the property for taxation within the limits of the County of Meagher and the County of Fergus for the year 1886.

Approved March 9, 1887.

An act to create the county of Park; to define its boundaries and to provide for its organization.

Be it enacted by the legislative assembly of the Territory of Montana.

SECTION 1. That portion of the territory of Montana, lying and situated within the following boundaries, viz: Beginning at the northwest corner of Yellowstone National Park and running thence one mile west; thence north to the northwest corner of township seven, south of range six, east of the principal meridian; thence northeasterly along the water shed or summit of the Belt range of mountains to the southwest corner of township two, south of range eight, east of the principal meridian; thence due north to the south boundary line of Meagher county; thence east along the south boundary line of Meagher county to the west boundary line of Yellowstone county; thence south along the west boundary line of Yellowstone county to Yellowstone river; thence westerly along the Yellowstone river to the mouth of Big Boulder river; thence southerly and easterly along the west and south boundaries of the Crow Indian reservation to the north boundary of Wyoming territory, at the southwest corner of said Crow Indian resevation; thence west along the north boundaries of Wyoming territory and the Yellowstone National park to the place of beginning, be, and the same is hereby created, set apart and established as a county to be known as and called Park county. That the village of Livingston, situated within said boundaries, shall be the county seat of said Park county, until some other place within said boundaries shall be designated as provided by law,

Sec. 2. All laws of a general nature applicable to the several counties of this territory, and the officers thereof are hereby made applicable to said Park county, and the officers who may be hereafter elected or appointed therein.

Sec. 3. That the present indebtedness of the county of Gallatin is hereby apportioned between said county and the county of Park as follows, to-wit: To the said county of Gallatin the said county of Park shall be liable for and shall pay the sum of thirty-five thousand dollars, which said sum shall be in full of all claims and demands against said county of Park for or on account of its proportion of the present indebtedness of the said county of Gallatin. And it is hereby made the duty of the county commissioners of the county of Park to cause to be issued at their first regular session to said county of Gallatin a warrant or warrants on the general fund of said county of Park for the sum of thirty-five thousand dollars, which said warrants if not paid on ptesentation to the treasurer of said county of Park, shall be by him endorsed "not paid for want of funds," and shall thereafter bear like rate of interest as other county warrants. And said warrants shall be the first warrants issued and shall take precedence over any and all other county obligations, and shall be paid out of the proceeds of the first bonds sold by said county of Park; or if such bonds are not issued and sold, then said warrants shall be paid first in order of their issue out of the funds in the treasury of said county of Park.

Sec. 4. The following named persons are hereby appointed to fill the offices set opposite their names respectively, to-wit:

George H. Carver, county commissioner.
Benjamin F. Meyers, county commissioner.
George M. Hatch, county commissioner.
Oliver P. Templeton, sheriff.
Frederick W. Wright, treasurer.
Elsberry Martin, county clerk.

M. D. Kelly, probate judge.
John H. Holliday, assessor.
John H. Elder, county attorney.
Nettie Ballinger, superintendent of county schools.
Heber Robarts, coroner.
Samuel Moore, county surveyor.
Thomas K. Lee, public administrator.

Who shall have the same powers, duties and privileges as are by law conferred upon like officers in other counties, and who shall hold their respective offices until after the next general election, or until their successors are duly elected and qualified. Said county commissioners, before entering upon their duties, shall severally give the bond and take the oath required of county commissioners. Said bond shall be filed with and approved by the territorial auditor.

SEC. 5. At the next general election three county commissioners shall be voted for in said county of Park. The person receiving the highest number of votes for county commissioner shall hold the office until the general election of 1892, and until his successor is elected and qualified. The two persons receivmg the next highest number of votes for county commissioner shall hold the office until the general election in the year 1890, and until their successors are elected and qualified. If two or more persons voted for as commissioners at said election receive an equal number of votes, the terms of office of the commissioners between whom such tie exists shall be determined by lot.

SEC. 6. All township and precinct officers, road supervisors, officers of school districts, and other officers of any kind, within the said county of Park, whose election or appointment is not herein provided for, shall or may continue to hold the offices and exercise the duties pertaining thereto until the expiration of the term for which they were respectively elected or appointed. All the present officers of Gallatin county who remain within the boundaries of the county of Gallatin as herein defined, on and after May 1st, 1887, may serve out the term of office to which they were respectively elected or appointed.

SEC. 7. That the officers mentioned in section four of this act shall each be allowed to receive an annual compensation for their services as such officers as follows, to-wit:

Treasurer, two thousand dollars.
Sheriff, two thousand dollars.
Assessor, Eighteen hundred dollars.
County clerk, two thousand dollars.
Probate judge, twelve hundred dollars,
Superintendent of common schools, eight hundred dollars.
County attorney, four hundred dollars, and such other fees as are provided by law.
Deputy clerk of the district court, one thousand dollars.

Said salaries shall commence when said officers shall enter upon their respective duties.

SEC. 8. The tax levy heretofore made by the county commissioners of Gallatin county for the year 1887 shall be, and remain the tax levy within the said county of Park for said year, and the county of Gallatin shall have and receive all revenues arising within the present boundaries of Gallatin county until May 1st, 1887, except such as arise from the assessment or tax levy for the year 1887, within the limits of Park county, as herein defined, and it shall be the duty of the treasurer of Gallatin county to make out and transfer to the county commissioners of Park county, for the use of said county, lists of all delinquent taxpayers and amounts of uncollected taxes within the limits of said Park county, which said delinquent taxes shall belong to Park county and be collected by its treasurer; and all delinquent taxes within the limits of said county of Gallatin shall belong thereto and be collected by the treasurer for the use and benefit of said county of Gallatin. Each of said counties shall own and control all county property within its respective boundaries, and neither shall have any claim against the other by reason therefor, but this shall be a full, complete and final settlement between said counties as to the adjustment of values concerning all county property and all cash on hand May 1st, 1887, to be and remain the exclusive property of Gallatin county.

SEC. 9. The commissioners of the County of Park shall have power to contract for transcribing such parts of the public records of Gallatin county as they may deem useful and necessary to the county of Park and its inhabitants, and for this purpose shall have suitable and necessary access to the records of Gallatin county. Said records, when completed, shall be carefully compared with the originals by the county clerk of Gallatin county, and, if correct, he shall certify to their correctness under his official seal, and thereafter the copies of said records so transcribed and certified to shall be admitted and received in evidence in all courts in this territory, and shall be in all other respects entitled to like faith and credit as said original records. The county clerk of Gallatin county shall receive for his services in comparing and certifying to the correctness of the copy of said record, six dollars per day while actually engaged in said labor and no other compensation, which amount shall be paid by the county of Park on the completion thereof, in the manner provided by law for the payment of county obligations.

SEC. 10. At the next general election after the passage of this act the qualified electors of the said county of Park shall select a county seat for said county by ballot. The county clerk, in his notice of said election, shall give notice to the electors to have written or printed on their ballots the name of a place for county seat, and the place having the greatest number of votes cast at said election for county seat shall be the county seat of said county. The votes for county seat shall be returned to and canvassed by the same board of canvassers as by law canvass the votes for county officers.

SEC. 11. This act shall take effect and be in force on and after the first day of May, 1887, but the county of Park shall remain attached to the county of Gallatin for judicial purposes until the first day of August, A. D. 1887, and all expenses and indebtedness incurred by said county of Park between May 1st and August 1st of said year, which shall become a proper charge against said county of Gallatin, shall be paid by said county of Park on presentation of the account, in the same manner as other county indebtedness.

SEC. 12. The county boundaries of the county of Gallatin are hereby altered to conform to the county boundaries of Park county as established by this act.

Approved February 23, 1887.

An act to amend an act entitled " An act to enable the county of Lewis and Clarke to erect a court house, approved March 12, 1885.

Be it enacted by the legislative assembly of the territory of Montana,

SECTION 1. That section 1 of an act of the fourteenth session of the legislative assembly of the territory of Montana, entitled "An act to enable the county of Lewis and Clarke to erect a new court house," be amended so as to read as follows:

SEC. 1. That the county commissioners of the county of Lewis and Clarke, of the territory of Montana, are hereby authorized and empowered to build a court house for said county, for the convenient transaction of public business and preservation of public records, and are hereby authorized and empowered from time to time to issue, on the faith and credit of said county, coupon bonds to an amount not exceeding in the aggregate the sum of one hundred and ninety thousand dollars, or so much thereof as may be necessary to enable them to erect a court house and provide the same with necessary and proper furniture, fire proof vaults and safes, which said bonds shall be redeemable at the pleasure of said county after six years from their date, and of which said bonds, the first one hundred and fifty thousand dollars, or so much thereof as may be issued, shall be dated July 1st, 1885, and the remaining forty thousand dollars worth of said bonds, or so much thereof as shall be issued, shall be dated May 1st, 1887, and shall become due and payable twenty years from their respective dates.

Approved March 1, 1887.

An act to amend an act entitled an act to create the county of Yellowstone and for the election of officers thereof, approved February 26, 1883.

Be it enacted by the legislative assembly of the Territory of Montana,

SECTION 1. That section 10 of an act entitled an act to create the county of Yellowstone and for the election of officers thereof, approved February 26, 1883, be and the same is hereby amended so as to read as follows:

SEC. 10. The county of Yellowstone and all persons in its name are hereby prohibited from contracting any indebtedness whereby said county shall become bound in any sum which shall at the time of contracting the same exceed four per cent. of the assessed value of the taxable property of said county taking the last previous assessment thereof as the standard of valuation, and no cause of action shall lie against said county for any indebtedness contracted in its name above the limitation mentioned, however the same may be evidenced, but nothing herein contained shall deprive the holder of any indebtedness contracted in the name of or on behalf of said county from a right of action against the person or persons who actually contracted the same or who received a consideration therefor.

Approved March 3, 1887.

JOINT RESOLUTIONS.

Council Joint Resolution relating to the employment of additional clerks.

Be it resolved by the legislative assembly of the Territory of Montana, That the president of the council and speaker of the house, each respectively, be, and they are hereby authorized and empowered to employ an assistant clerk, or clerk of the ways and means committee, and a clerk of the judiciary committee, who shall perform the duties indicated by their titles and such other duties as may be assigned to them; they shall receive the sum of five dollars per day each for the time actually employed in such service, and the territorial auditor is hereby directed and required to draw his warrant on the territorial treasurer for the amounts due said clerks respectively, upon the certificate of the chief clerk and presiding officer of the house in which said clerks are employed.

Approved January 15th, 1887.

Council Joint Resolution for relief of George Bashaw, J. H. McFarland and John O'Neill.

Be it resolved by the council and house of representatives of the legislative assembly of the territory of Montana, That the sum of one thousand dollars ($1000.00) shall be paid to George Bashaw, J. H. McFarland and John O'Neill out of any moneys in the territorial treasury, not otherwise appropriated, for the apprehension by them of one Con Murphy, an escaped prisoner; said sum being the amount of a reward offered by the acting governor of Montana territory for the apprehension and return of said escaped prisoner on the 17th day of November, 1884, and the territorial auditor is hereby required to draw his warrant upon the territorial treasurer in favor of said George Bashaw, J. H. McFarland and John O'Neill for said sum of one thousand dollars ($1000.00.)

Approved January 26th, 1887.

Council Joint Resolution for the Relief of certain Cree Indians.

Be it resolved by the Legislative Assembly of the Territory of Montana, That the sum of five hundred dollars or so much thereof as may be necessary, is hereby appropriated out of any moneys in the Territorial Treasury for the relief of certain Cree Indians on Willow Creek, in this Territory, and the Secretary of the Territory is authorized to furnish provisions and such other temporary relief as may be deemed necessary to said Indians and to appoint such agent or agents as may be needed for the purpose of carrying out the provisions of this resolution. The Territorial Auditor upon the receipt of duly certified bills, shall draw his warrant on the Territorial Treasury in favor of Wm. B. Webb, Secretary, for the amount thereof.

Approved January 27, 1887.

Council Joint Resolution authorizing the appointment of a committee to confer with the authorities of Dakota in relation to measures for the prevention and suppression of contagious diseases among live stock.

Resolved by the legislative council, the house of representatives concurring, That a special committee of five, consisting of two members of the council and three members of the house, be appointed by the president of the council and speaker of the house, to confer with such officials of the territory of Dakota as may be selected by the legislative assembly, or by the governor of said territory, as to the adoption of some common measure looking to the prevention and suppression of contagious diseases among live stock, proper quarantine regulations, and such other matters relating to said subject as may properly come before said conference committee; that the governor be and he hereby is requested to transmit this resolution to the governor of Dakota, with a request that the same be laid before the legislative assembly of said Dakota territory, with recommendation from him that action be taken therein.

Council Joint Resolution to defray the expense of telegraphing C. J. M. No. 2 to our Delegate at Congress.

Resolved by the Council, the House concurring, That Wm. B. Webb, Secretary of the Territory, be requested to wire Council Joint Memorial No. 2, asking that the office of United States Surveyor General in the Territories be not abolished, to Hon. Joseph K. Toole, our Delegate in Congress, together with the resolution requesting him to present the same to the two Houses of Congress and the proper committees, and that upon presentation of the bill for cost of same to the Territorial Auditor he is directed to issue his warrant upon the Territorial Treasurer in favor of Wm. B. Webb, for the amount of said bill.

Approved February 15, 1887.

Council Joint Resolution to provide compensation for Wm. Steele and Frank R. Shaffer, accountants.

Be it resolved by the council and house of representatives of the legislative assembly of Montana, That there be and the same is hereby appropriated out of the territorial treasury out of any moneys not otherwise appropriated, for compensation for services as expert accountants, employed by the committee appointed to examine the books of the territorial auditor and treasurer, under the authority of the council joint resolution, to William Steel and Frank R. Shaffer, one hundred dollars; that the territorial auditor is hereby authorized to draw his warrant on the territorial treasurer in favor of said persons for the amount hereinbefore stated.

Approved March 4, 1887.

Council Joint Resolution to authorize the employment of additional clerks for the enrolling of bills.

Be it resolved by the legislative assembly of the territory of Montana, That the committees of enrollment of the council and house of representatives are hereby authorized to employ additional clerks at a compensation of five dollars per day to assist in enrolling bills and perform such other duties as may be assigned them. The territorial auditor is hereby authorized upon the certificate of the chief clerks as to such employment and attendance, to draw his warrant for the amount of pay and in favor of the clerks authorized herein.

Approved March 5, 1887.

Council Joint Resolution to defray the expenses of the executive department.

Resolved by the council, the house concurring, All necessary expenditures of money incurred by the governor for office rent, fuel, postage, printing, expressage, and janitor.s services, not exceeding eight hundred dollars annually, shall be paid of any fund in the treasury not otherwise appropriated, and the territorial auditor, upon the certificate of the governor, is hereby authorized to issue his warrants upon the treasurer for the same.

Approved March 7, 1887.

Council Joint Resolution to compensate D. H. Weston, territorial treasurer, for extra service in recording and printing marks and brands.

Be it resolved by the legislative assembly of the territory of Montana, That there be appropriated out of the territorial treasury out of any moneys not otherwise appropriated, the sum of twenty-five hundred and ninety-one dollars ($2,591) in favor of D. H. Weston. That the said D. H. Weston as territorial treasurer has performed the extra service of recording and printing marks and brands, since February 15, 1877, without compensation, and has collected for said service of recording marks and brands, five thousand one hundred and eighty-two dollars ($5,182), which he has paid into the territorial treasury, and the said sum of twenty-five hundred and ninety-one dollars ($2,591) is one half the amount collected and paid into the territaoial treasury.

The territorial auditor is hereby authorized to draw his warrant on the territorial treasurer for twenty-five hundred and ninety-one dollars ($2,591) in favor of the said D. H. Weston.

Approved March 8, 1887.

Council Joint Resolution for the relief of Farragut Post No. 7, G. A. R.

Be it resolved by the legislative assembly of the territory of Montana, that,

Whereas, twenty stand of arms and accoutrements have been heretofore issued by the territory of Montana, to Farragut Post, No. 7, G. A. R., and whereas, said arms and accoutrements were totally destroyed on December 30th, 1885, in the fire that destroyed the hall of said Farragut Post, No. 7; now, therefore, be it

Resolved, By the legislative assembly of the territory of Montana, that said Farragut Post, No. 7, G. A. R., be, and it is hereby released from any and all further liability for and on account of said arms and accoutrements; and that the territorial auditor be and is hereby authorized and directed to credit said Farragut Post, No. 7, G. A. R., with the amount charged against it on his books for said arms and accoutrements.

Approved March 8, 1887.

Council Joint Resolution to defray the expenses of the joint committee visiting the penitentiary and territorial insane asylum, and the committee to confer with a joint committee, appointed by the legislative assembly of Dakota to meet at Miles City and confer upon measures for the protection of live stock.

Be it resolved by the legislative assembly of the territory of Montana, That there is hereby appropriated out of the territorial treasury, out of any money not otherwise appropriated, the sum of twenty cents per mile for one hundred and sixty miles traveled by said committee to the penitentiary and territorial insane asylum and return, in favor of the following named persons:

S. L. Holliday,
E. C. Waters,
C. W. Huffman,
C. R. A. Scobey,
Ed. Cardwell,
M. W. White,
J. M. Page,
Wm. Thompson, and to

E. N. Harwood the sum of twenty cents per mile for four hundred and fifty-six (456) miles travelled to meet the joint committee from the legislative assembly of the territory of Dakota, to confer upon proper measures for the protection of the stock interests of Montana and Dakota.

The said named persons served as joint members of special committees duly authorized by a joint resolution passed by both the council and house of representatives of the fifteenth legislative assembly of the territory of Montana, and that three hundred and forty-seven 20-100 dollars is the amount of expenses necessarily incurred by the committee to visit the penitentiary and insane asylum, and to meet said joint committee from the legislative assembly of Dakota Territory, and the territorial auditor is hereby ordered to draw his warrant upon the territorial treasurer in favor of the several parties herein named for the amount due as indicated herein.

Council Joint Resolution instructing the secretary of the territory to omit the publication of a certain alleged law relative to the protection of game.

WHEREAS, On the tenth day of March, 1885, being the fifty-eighth day of the fourteenth regular session of the legislative assembly of the territory of Montana, house bill No. 118, a bill for an act entitled "An act relating to the protection of game," was introduced by Wells (see page 257 house journal 14th session) and passed by the house (see page 259 house journal 14th session), and

WHEREAS, The said bill was defeated in the council by a vote (see page 264 council journal 14th session), and the house so notified (see page 294 house journal 14th session); but,

WHEREAS, By some error said bill was ordered enrolled (see page 259 house journal 14th session) was correctly enrolled (see page 296 house journal 14th session) was signed by the speaker (see page 297 house journal 14th session) and by the president of the council (see page 269 council journal 14th session) and approved by the governor (see page 299 house journal 14th session); and,

WHEREAS, Said bill, though not having passed one branch of the legislative assembly, has been enrolled in the printed laws of the fourteenth session of the legislative assembly (see page 83 of said printed laws) and is being enforced throughout the territory. Now, therefore,

Be it resolved by the legislative assembly of the territory of Montana, That the secretary of the territory is hereby empowered and directed to strike out from any official compilation or copies of the laws or statutes which may be hereafter printed, said alleged law for the protection of game, which is now found on page 83 of the printed "laws, resolutions and memorials of the territory of Montana," passed at the fourteenth regular session of the legislative assembly.

Approved March 10, 1887.

House Joint Resolution providing for the payment of printing not provided for by the general government.

Be it resolved by the house of representatives of the territory *of Montana, the council concurring*, That the sum of five hundred dollars ($500) or so much thereof, as may be necessary, be, and the same is hereby appropriated out of any money in the territorial treasury, not otherwise appropriated, to defray the expenses of such printing, for the present session, as may not be provided for by the general government, including bills, resolutions, memorials, etc., presented in either house of the present legislative assembly; also including a sufficient number of copies of the daily newspapers, published in the city of Helena, (not to exceed fifty of each, each day) for the use of both houses. And the territorial secretary is hereby authorized to cause such printing to be properly done, and the papers to be furnished; and his certificate for the same, accompanied by the proper vouchers, shall be sufficient authority for the territorial auditor to draw his warrant or warrants on the territorial treasurer for the respective accounts.

Approved February 5th, 1887.

House Joint Resolution authorizing the purchase of office furniture, fixtures and supplies for the office of the governor and secretary of Montana.

WHEREAS, The office of the governor and secretary of the territory are about to be moved into permanent quarters in the new court house of Lewis and Clark county, and the amounts aprropriated by the general government being entirely insufficient for the purpose of purchasing suitable furniture and office fixtures, and for the preservation and care of the records of the territory in said offices. Therefore be it

Resolved, By the house of representatives, the council concurring, that the sum of one thousand dollars or so much thereof as may be necessary, be and the same is hereby appropriated out of any moneys in the territorial treasury not otherwise appropriated, for the purpose of purchasing proper furniture, fixtures and supplies for the offices of the governor and secretary of the territory, and the auditor is hereby authorized to draw his warrant or warrants on the treasurer of the territory to the amount of said sum or so much thereof, as may be necessary upon the presentation of the proper vouchers for said furniture, fixtures or supplies duly certified by the governor or secretary of the territory. And said property when bought shall be the property of the territory.

Approved March 3, 1887.

House Joint Resolution for the relief of Fisk Bros.

Be it resolved by the legislative assembly of the territory of Montana, That the sum of one hundred and ninety-six dollars and sixty cents be paid to Fisk Bros. out of any moneys in the territorial treasury not otherwise appropriated, to re-imburse said Fisk Bros. for money paid by them for cuts used in the publication of the marks and brands pamphlets for the year 1885 and 1886, and the territorial auditor is hereby directed to draw his warrant on the territorial treasurer for such sum, payable to said Fisk Bros.

Approved March 7, 1887.

House Joint Resolution for the relief of Ansalem J. Davidson and William N. Baldwin.

Be it resolved by the house of representatives and council of the territory of Montana.

SECTION 1. There is hereby appropriated ou of any moneys in the territorial treasury not otherwise appropriated, the sum of fifteen hundred dollars, to be paid to Ansalem J. Davidson and William N. Baldwin, to compensate them for damages sustained by reason of the governor of Montana refusing to comply with a certain contract made with them for the labor of convicts in the territorial penitentiary made under the provisions of section 234, of the fifth division of the revised statutes of Montana.

SEC. 2. The territorial auditor is hereby authorized and directed to draw his warrant on the territorial treasurer for said sum of fifteen hundred dollars, payable to the said Ansalem J. Davidson and William N. Baldwin, or their order, in full payment and satisfaction of said claim for damages.

Approved March 7th, 1887.

House Joint Resolution to provide for the payment of telegraphing. House Joint Memorial No. 5 to the delegate of Montana at Washington, D. C., and for other purposes.

Be it resolved by the legislative assembly of the territory of Montana, That there is hereby appropriated out of the territorial treasury, of any money not otherwise appropriated, the sum of eight dollars and fifty cents in favor of William B. Webb, the secretary of Montana, for the payment of transmitting house joint memorial No. 5 to the delegate of Montana at Washington, D. C. That there is hereby further appropriated the sum of twenty-five dollars in favor of said William B. Webb, for the payment of the price of a seal for the territory of Montana over and above the appropriation just made therefor. That the territorial auditor is hereby directed to draw his warrant on the territorial treasury for said sums payable to said William B. Webb.

Approved March 9, 1887.

House Joint Resolution to compensate Charles H. Snell for compiling and arranging the general and permanent laws of the territory of Montana.

Be it resolved by the legislative assembly of the territory of Montana. That the sum of one thousand dollars be appropriated out of any money in the territorial treasury not otherwise appropriated, as full compensation to Charles H. Snell, for compiling and arranging the general and permanent laws of the territory of Montana, in force at the convening of the fifteenth regular session of the legislative assembly on the tenth day of January, A. D., 1887. And the territorial auditor is hereby authorized and directed to draw his warrant on the territorial treasurer in favor of Charles H, Snell for the said sum of one thousand dollars.

Approved March 10, 1887.

House Joint Resolution making appropriation for the historical Society of Montana.

Be it resolved by the house of representatives, the council concurring, That there be and is hereby appropriated annually to the historical society of Montana, to be drawn by the treasurer thereof, the sum of four hundred dollars, in payment of the rent of rooms, fuel and light, furniture, the binding of newspapers and magazines and services of a librarian; and the territorial auditor is hereby authorized to draw his warrant or warrants in favor of such treasurer for the said sum of four hundred dollars per annum.

Approved March 10, 1887.

JOINT MEMORIALS.

House Joint Memorial concerning the Crow Indians.

To the honorable, the senate and house of representatives of the United States, in congress assembled: Your memorialists, the council and house of representatives, composing the legislative assembly of the territory of Montana, respectfully represent to your honorable bodies, that the honorable commissioners; J. V. Wright, J. W. Daniels and C. F. Larabee, appointed by the honorable secretary of the interior, to negotiate and treat with various tribes of Indians of northern Montana, under the provisions of an act of congress entitled "An act making appropriations for the current and contingent expenses of the Indian department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30th, 1887, and for other purposes," approved May 15th, 1886, have, as your memorialists believe, performed their duties with much success, and are now about to depart from Montana. That as your memorialists believe it was the intent of said act to include the Crow Indians "situated south of the Yellowstone river in Montana," among the tribes to be treated with by said commissioners, on the subjects mentioned therein, but by a strict construction thereof, said commission feels unauthorized to treat with said tribe.

That by the allotment of lands in severalty to the said Crow Indians, a large tract of their reservation lying west of the Big Horn river, comprising agricultural, grazing and mineral lands, is wholly unnecessary for the use of said tribe, and should be opened to settlement by citizens of the United States; wherefore your memorialists urgently pray that your honorable bodies enact such measure as is necessary, to enable said commissioners to treat and negotiate with said Crow Indians before leaving Montana. And your memorialists, as in duty bound, will ever pray.

F. K. Armstrong, *Speaker of the House.*
R. O. Hickman, *President of the Council.*

House Joint Memorial resolution concerning the Fort Buford military reservation.

To the President of the United States: Your memorialists, the council and house of representatives, composing the legislative assembly of the territory of Montana, respectfully represent, That the extension of the St. Paul, Minneappolis & Manitoba railroad into Northern Montana at an early date, will be assured as soon as said company can obtain a right of way for its road; that the portion of the Fort Buford military reservation south of the Missouri and west of the Yellowstone rivers, lies between said railroad, and a large quantity of valuable agricultural land in the valley of the Yellowstone river, that said lands are surveyed and partially settled, and their further settlement is only delayed by their distance from market and railroad; that while said part of said reservation exists, no trading point can be established nearer than twenty-five miles to said railroad, thus depriving a large country of most of the benefits of the construction of said railroad. Your memorialists therefore ask that an executive order be issued restoring all that portion of said reservation which lies south of the Missouri, and west of the Yellowstone rivers, to the public domain.

F. K. Armstrong, *Speaker of the House.*
R. O. Hickman, *President of the Council.*

Council Joint Memorial asking that the office of United States surveyor general in the territories be not abolished.

To the honorable, the Senate and house of representatives of the United States, in congress assembled: We, your memorialists, the council and house of represensatives composing the legislative assembly of the territory of Montana, learn with alarm that it is proposed in the sundry civil bill, now before congress, to abolish the office of United States surveyor general in the territories, and transfer the business and records of said offices to Washington.

We respectfully urge in opposition that now the orders of survey are issued and surveys made and returned to the office with promptness; plats and field notes of the same examined and connections made with dispatch; transcripts and plats of mineral surveys executed and forwarded to the commissioner of the general land office and local land offices with least possible delay and expense to the applicants, and information given, both oral and written, to all inquirers as regards mineral and agricultural surveys. We urge that said change would entail a greater expense on the general government, as well as on the claimants and owners of mineral lands, whose expense in loss of time, fees, litigation, and delays in obtaining patents, would thereby be at least double. For these reasons, your memorialists would respectfully urge your honorable body that such change be not allowed to take place;

Resolved, That our delegate in congress be requested to use all honorable means to the end that said office be not abolished in the territories, and that he be requested to present this memorial to the two houses of congress and the proper committees.

J. E. Kanouse,
Speaker pro. tem. House of Representatives.
R. O. Hickman.
President of the Council.

Council Joint Memorial relative to pioneer settlers of the Yellowstone National Park.

To the Honorable, the Senate and House of Representatives of the United States in congress assembled: Your memorialists, the council and house of representatives, comprising the legislative assembly of the territory of Montana, respectfully represent that in the years 1870 and 1871, Harry R. Horr, James C. McCartney, John C. Baronett, John W. Ponsford and Mathew McGuirk, of the United States, settled upon certain lands now embraced in the Yellowstone National park, and in every particular complied with the public land laws. Owing to the isolated location of said settlement, the same being seventy miles distant from the nearest trading point or other settlement, they were subject to many privations and hardships, the Yellowstone valley at that time being infested by hostile Indians, said settlers were often compelled to hide during the day time and perform their labor upon their claims at night to escape the Indians who frequently committed murders.

That the act of congress setting apart the National park dispossessed these worthy pioneers of their valued claims and improvements; that employees of the government are at the present time occupying most of the buildings erected by said settlers.

Your memorialists respectfully submit that to dispossess citizens of their hard earned property without adequate reimbursement is adverse to good government. and therefore petition your honorable body to adopt such measures as will cause an amicable adjustment of the grievances herein mentioned. And in duty bound your petitioners will ever pray, etc.

F. K. Armstrong, *speaker of the house.*
R. O. Hickman, *president of the council.*

House Joint Memorial relating to the extension of the public surveys.

To the honorable, the senate and house of representatives of the United States, in congress assembled; Your memoralists, the council and house of representatives, composing the legislative assembly of the territory of Montana, respectfully represent to your honorable bodies, that out of an area of sixty-one million, four hundred and forty-two thousand acres of the land in our territory, exclusive of the Indian reservations, only seventeen millions of acres are included within the public surveys, and while we realize the fact that the most desirable lands in our valleys, where the most populous settlements are found are already surveyed, there are still many settlers upon lands yet unsurveyed, who are unable to obtain title to or have any knowledge as to the subdivisional lines of their claims; that these, and intending settlers, should be permitted to know with certainty the exact description by legal subdivisions of the lands upon which they desire to settle; that the settlers upon unsurveyed lands do not contribute their share of the public expense, and to the present time the government has been unable to protect its interests upon the unsurveyed lands. That the land grant and indemnity lands of the Northern Pacific railroad company, in Montana, embrace one thousand seven hundred and fifty townships, and that of that, there are only four hundred and fifty townships now surveyed. Therefore, said railroad company only pay taxes upon about twenty-six per cent. of their land in Montana, for the reason that the remainder is not surveyed. That the public land surveys, pushed with reasonable diligence each year, and inspected promptly and properly, would be a great benefit to the intending settlers and others who are engaged in agricultural, pastoral and mining pursuits, and would be the cheapest and most effective manner of obtaining an accurate geographical knowledge of the whole territory, which would be invaluable to the government in many respects both civil and military.

Therefore your memorialists earnestly pray your honorable bodies to make adequate appropriations to be apportioned to the surveying service of Montana, for the purpose of extending the public surveys as rapidly as possible, and your memorialists will, as in duty bound, ever pray.

F. K. Armstrong, *Speaker of the House.*
R. O. Hickman, *President of the Council.*

Council Joint Memorial concerning the improvement of the Yellowstone National Park.

To the honorable, the senate and house of representatives of the United States of America, in congress assembled; Your memorialists, the council and house of representatives composing the legislative assembly of the territory of Montana respectfully represent to your honorable body that the Yellowstone National park constantly grows in popular estimation, and that the travel through it, coming from every quarter of our country, is increasing greatly each year; yet fully one hundred miles of wagon roads and bridges must be made and built before many of its most interesting features can be visited by tourists. According to the estimate of the engineer officer of the army in charge, Captain D. C. Kingman, it will require three hundred thousand dollars to put the park in proper order in the matter of roads and bridges. Such is also the opinion of those acquainted with the facts. On behalf of the territory of

Montana, we respectfully ask your honorable body to make an appropriation for this amount. There are many reasons why it should be done. In area, this park could cover all the parks in this country or Europe, and in grandeur it far surpasses them all put together.

We further pray your honorable body that if the whole amount appropriated be not expended in one year, the appropriation may not lapse, but continue over.

P. K. Armstrong, *Speaker of the Honse.*
R. O. Hickman, *President of the Council.*

INDEX

TO CONSTITUTION OF THE UNITED STATES.

PAGE.

CONSTITUTION........................ 6-15

AMENDMENTS........................ 16-19

ADJOURNMENT OF CONGRESS.
  Sec. 5........................ 8

APPORTIONMENT. See Congress...

ARMY and Navy.
  President and commander-in-chief of, sec. 2........................ 12

ARMS.
  Right of people to bear, art. 2........ 16

ARREST
  Members of Congress privileged from, sec. 6........................ 8

BAIL.
  Excessive, not to be required, art. 18 . 17

BILLS.
  How become law, sec. 7............. 8
  When become law without President's approval, sec. 7 8
  Of attainder, none shall be passed, sec. 9........................ 10
  Of credit, no state shall emit, sec. 10 10
  For raising revenue, shall originate in House of Representatives, sec. 7 8

CITIZENS of the United States.
  Who are, sec. 1........................ 18
  Of states, sec. 1........................ 18
  Privileges of, sec. 2........................ 14
  Rights of, sec. 1........................ 19

CONGRESS.
  Legislative powers vested in, sec. 1.. 6
  Of what consists, sec. 2 6
  Apportionment of Representatives, sec. 2........................ 6
  To meet annually, sec 4............. 8
  Adjournment of, sec 5............ ... 8
  Powers of, defined and enumerated, sec. 8.... 9-10
  To make rules and regulations respecting territory and other United States property, sec. 3............. 14
  Members of, privileged from arrest, sec. 6........................ 8
  Members of, disqualified from holding certain offices, sec. 6.......... 8
  Veto power over acts of, sec. 7........ 8
  To make laws to carry out the provisions of the Constitution, sec. 8.. 10
  Votes for President and Vice-President opened and counted in presence of, art. 12................... .. 17

PAGE.

CONGRESS.
  Each house may adopt its own rules, sec. 5 ....

CONSTITUTION of United States.
  Preamble to........................ 6
  Amendments to 16
  Amendments to, how made, art. 5... 15
  Laws made in pursuance of, supreme, art. 6........................ 15
  Ratification of, art. 7,............... 15
  Powers not delegated in, reserved to States or people, art. 10... 17

COURTS of the United States.
  Judges of, hold office during good behavior, sec 1. 13
  Jurisdictior sec. 2........................ 13

ELECTORS.
  Presidential, now elected, sec. 1...... 11
  Time of choosing, prescribed by congres. sec. 1........................ 12
  For President and Vice-President, art. 12 17
  For senators and representatives, sec. 4........................ 7
  Times and places of holding, sec. 4.. 7
  How prescribed, sec. 4............... 7
  Each house of congress judges of, sec. 5........................ 8

EXECUTIVE. See President.

EX POST FACTO Laws.
  None shall be passed, sec 9.......... 10

FINES.
  Excessive not to be imposed, art. 8 . 17

FUGITIVES.
  From justice, delivered up when, sec. 2........................ 14
  From service or labor, sec. 2 14

GRAND JURY.
  Accused to be presented by, exceptions, art. 5........................ 15

HABEAS CORPUS.

  Shall not be suspended, exceptions, sec. 9........................ 10

HOUSE of Representatives of the United States
  How composed, sec. 2..... 6
  Apportionment of members of, sec. 2 6-7
  Vacancies in, how filled, sec. 2....... 7
  Judge of qualifications of its members, sec. 5........................ 8

PAGE.

To choose its officers, sec. 2 ... 7
To keep a journal of its proceedings, sec. 5 ... 8
May determine its rules, etc., sec. 5 ... 8
Revenue bills to originate in, sec. 7 ... 8
Who may be members of, sec. 2 ... 6
Compensation of members, sec. 6 ... 8
Adjournment of, sec. 5 ... 8
When may elect President, art. 12 ... 18

IMPEACHMENTS
Sole power to try, sec. 3 ... 7
Concurrence of two-thirds necessary to convict, sec 3 ... 7
How far judgment in shall extend, sec 3 ... 7

JUDICIAL POWER.
How vested, sec. 1 ... 13
To what shall extend, sec. 2 ... 13
All crimes, except in cases of impeachment, tried by jury, sec. 2 ... 13
Judicial power, construed, art. 11 ... 17

JURY.
Right of trial by, sec. 2 ... 13

JUDGMENTS.
In cases of impeachments, sec. 3 ... 7

JURISDICTION. See Courts.

LAWS.
No ex-post facto to be passed. sec. 9 ... 10
In pursuance of constitution, supreme, art 6 ... 15

MONEY. See Treasurer.

NAVY. See Army and Navy.

NOBILITY.
No title to be granted. sec. 9 ... 10

PRESIDENT of the United States
Term of office of, sec. 1 ... 11
How elected ... 11-12-17-18
Qualifications of, sec. 1 ... 12
May be impeached, sec. 4 ... 13
When tried, chief justice to preside, sec. 3 ... 7
Oath of office, sec. 1 ... 12
Commander in chief of army and navy, sec. 2 ... 12
Duties and powers of, sec. 2, 3 ... 12-13
May be removed on impeachment sec. 4 ... 13
Shall commission all officers, sec. 2 ... 12
Bills to be presented to for approval, sec 7 ... 8
Veto power of, sec. 7 ... 8
Compensation of, sec. 1 ... 12

PRESENTS.
No officer of the United States shall accept from foreign powers, sec. 9 ... 10

PRIVILEGES.
Of members of Congress, sec. 6 ... 8
Of citizens of the United States, sec 2 ... 14

POWERS
Not delegated, reserved to States or people, art. 10 ... 17

PUNISHMENTS
Cruel or unusual not to be inflicted, art 8 ... 17

REPRESENTATIVES. See Congress. House of Representatives.

REVENUE
Bills for, where to originate, sce. 7 ... 8

PAGE.

REVENUE.
Senate may propose amendments to, sec. 7 ... 8

RELIGION.
Congress shall make no law establishing, art. 1 ... 16

SENATE of the United States.
Sole power to try impeachments, sec. 3 ... 7
How composed, sec 3 ... 7
Shall be judge of its members, sec 5 ... 8
Who may be members, sec 3 ... 7
Vacancies in, how filled, sec. 3 ... 7
Trials of impeachment by, sec. 3 ... 7
To keep a journal of proceedings, sec. 5 ... 8
To determine rules of its proceedings, sec. 5 ... 8

SENATORS of the United States.
Who may be a senator, sec. 3 ... 7
How chosen, sec. 3 ... 7
Term of office, sec 3 ... 7
Classification of, sec. 3 ... 7
Compensation of, sec. 6 ... 8
Disqualified during the term from holding certain offices, sec. 6 ... 8

SLAVERY.
Abolished in the United States, sec. 1 ... 18

STATE.
Not to make treaty of alliance, sec 10 ... 11
Not to lay imposts or duties, sec. 10 ... 11
Not to grant letters of marque and reprisal, sec. 10 ... 10
Not to coin money or emit bills of credit, sec. 10 ... 10
Not to impair obligation of contracts, sec. 10 ... 10
Not to lay duty of tonnage. sec. 10 ... 11
Not to keep troops or ships of war, sec. 10 ... 11
New states. how admitted, sec. 3 ... 14
Powers not delegated, reserved to States or people, art. 10 ... 17
No new State created out of old without consent, etc., sec. 3 ... 14

SOLDIER.
In time of peace not quartered in any house without consent of owner, art. 3 ... 16
In time of war as prescribed by law, art. 3 ... 16

SEARCH and seizure.
Right of people against, art. 4 ... 16

TRIAL by jury.
Right of, sec. 2 ... 13

TRIAL.
Right of accused to speedy trial, art. 5 ... 16

TREASURY.
Money to be drawn only in pursuance of law, sec. 9 ... 10

TREASON. against the United States.
What shall be deemed, sec. 3 ... 14
Effect of conviction for, sec. 3 ... 14

UNITED STATES OF AMERICA.
See Constitution.

VACANCIES.
In representation of any state how filled, sec. 2 ... 6

VICE-PRESIDENT of the United States.
General duties and powers of, sec. 3 ... 7

INDEX

TO REVISED STATUTES AND LAWS OF THE UNITED STATES.

PAGE.

ACCOUNTS and disbursements.
  Ordnance account to be adjusted, chap. 132 55
  Treasury department to settle, sec 1886 29

ADULTERY.
  Punishment for, sec 3 35

ALIENS.
  Prohibited from acquiring real estate in territories, chap 340 33
  Same, exception, chap. 340 34
  Ownership of stock in corporation, sec 2 34
  Property unlawfully held forfeited, sec 4 34

APPEALS
  To supreme court, sec 1869 26
  Same, when may be taken, secs 1, 3 54
  Probate to district court, sec. 1932 42
  To supreme court U S., sec. 2 45

APPORTIONMENT.
  Ratio of representation, sec. 1849 23
  Legislature to make, chap. 329 51

ASSOCIATE JUSTICES
  Appointment of, sec. 1877 27
  Salary of, sec. 1879 28

ATTORNEY. See U. S. Attorney

ATTORNEY General, U. S.
  Penitentiary under control, sec. 1893 30

BILLS.
  Of exception, sec 1869 26

BILLS, Legislative.
  Governor to return in three days, sec. 1842 21

BOUNDARIES.
  Indian Territory excepted out, sec. 1839 20

CAPITAL.
  How selected, sec. 1885 29
  See seat of government

CENSUS
  When to be taken, sec. 1847 22
  Charitable corporations, &c, sec. 1890 29

CHARTERS.
  Words in act prohibiting territorial legislature from granting, &c, construed, chap. 168 51

PAGE.

CHARTERS
  Heretofore granted for municipal purposes, &c, ratified and confirmed, chap. 168 51

CHIEF JUSTICE.
  Appointment of, sec 1877 27
  Salary of, sec 1879 28

CIVIL RIGHTS. See rights.
  Circuit courts of U. S., sec. 1876 27

CLERK.
  Supreme court, term of, sec. 1870 26
  District court, compensation, sec. 1871 26
  Register in chancery, sec 1872 27

COLOR.
  No distinction on account of before the law, sec 1 46
    See rights.

COMPENSATION
  Legislative assembly, chap. 329 51
  Extra not allowed, sec 1855 24
  Clerk of district, sec. 1871 26
    See salary, officers, fees
  May annul territorial laws, sec. 6 33

CONGRESS
  Supervisory power over territorial laws, sec 1850 23
  Appropriations of, sec 1886 29

CONVICTS
  Contract may be made for keeping same beyond the territory, chap. 235 53

CONSTITUTION
  In force in territories, sec 1891 30

CORPORATIONS.
  Religious and charitable, real estate limited to $50,000, sec. 1890 29
  Same, trustees for, sec 26 38
  Surplus escheats to U. S., sec. 1890 29
  Vested rights unimpaired, sec. 1890 29
    See incorporations.
  What property may be held by, secs. 2, 3, 4 34
  May hold 5,000 acres of land, sec. 3 34
  Municipal, chap. 168 51
  Proceedings to forfeit property of, secs. 13, 14 37
  Private rights not created, chap. 168 51
  Contracts not affected, chap. 168 51
  Corporation debts, chap. 168 51

COUNCIL, Legislative.
  Members, qualifications of, sec. 1846 22

PAGE.

COUNCIL, Legislative.
  Members, number of, chap 329.. ... 51
    See House of Representatives and Legislative Assembly .

COUNTIES.
  Courts may be held in, sec 1874.... . 27
  Courts in, times and places, sec. 1914. 41

COURTS.
  Trial by jury in law cases, sec. 1... . 44
    See District Court; Supreme Court; Supreme Court of U. S.
  Jurisdiction limited, sec. 1866........ 26
  Terms of, sec 1914...... 41
  Practice, law and chancery, sec. 1... 44

DELEGATE to Congress.
  Elected and rights of, sec 1862....... 25
  First election of, sec 1863... 25
  Citizen of U. S., must be, sec. 1906... 40

DESERT LAND.
  Citizen of U. S. may reclaim not to exceed 640 acres, &c., sec. 1 48
  Declaration must describe, sec. 1.... 48
  Definition of term and how proven, sec. 2 49
  What considered such to be determined by commissioner, sec 3.... 49
  What states and territories act applies to, sec. 3.......... 49

DISTRICT COURT.
  Jurisdiction, common law and chancery, sec. 1868 26
  In U. S. cases, sec 1910......... 41
  Judicial power vested, sec 1907....... 40

DISTRICT COURT of U. S, sec. 1910.. 41

DISTRICT, Judicial
  See Judicial district.

DOWER.
  Of what widow shall be endowed, sec. 18........... 37
  Barred by divorce, sec. 18... 37

ELECTIONS
  First for legislature, sec. 1847......... 22
  To be conducted as Governor may direct, sec. 1847... 22
  Subsequent under laws of territory, sec. 1848 23
  Time and place of holding, sec. 1848.. 23

EQUALITY.
  Of persons before the law, sec. 1...... 46

ESCHEAT.
  Real estate of certain corporations to U. S., sec. 1890............ 29

EXECUTIVE POWER.
  Vested in Governor, sec. 1841......... 20

FEES AND COSTS.
  Allowed to certain officers, sec. 1883.. 28

FORNICATION.
  Punishment for, sec. 5................. 36

GOVERNOR.
  Term of office, sec. 1841............... 20
  Removed by President, sec. 1841...... 20
  Reside in territory, sec. 1841.......... 20
  Commander-in-chief, sec. 1841....... 20
  General powers of, sec. 1841........... 20
  Bills to be approved by, sec. 1842..... 21
  Veto power, sec. 1842................ 21
  Secretary, acting Governor, sec. 1843. 21
  To cause census to be taken, sec. 1847. 22
  To direct manner of holding first election, sec. 1847.. 22
  To apportion, sec. 1847............... 22
  Extra compensation not allowed, sec. 1855.......................... 24

PAGE.

GOVERNOR.
  To nominate certain officers, sec. 1857 24
  To fill vacancies, sec 1858.. 24
  To district territory and temporarily assign judges, &c., sec. 1873......... 27
  Appointment of, sec. 1877 27
  Oath of office, sec. 1878.... 27
  Salary, no payment until, sec. 1941. . 42

HABEAS CORPUS.
    See Writ of Habeas Corpus.

HOUSE of Representatives.
  Members, where to reside, sec. 1846. . 22
  Appointed according to ratio of population, sec. 1849, p. 23, chap. 329.... 51
  Number of members, sec. 1849, p. 23, chap. 329....................... 51

INCEST.
  Punishment for, sec. 4................ 36

INCORPORATIONS.
  Legislative assembly may pass general incorporation acts, sec. 1889.... 29
  Words in act relating to, construed, chap. 168.......................... . 51

INDIANS.
  Rights of person and property not impaired, sec. 1839..... 20
  Indian territory not embraced within boundaries of territory, sec. 1839. 20
  Authority to regulate lands of, sec. 1840............................... 20

IRRIGATION.
    See Water.

JUDGES.
  Supreme court, sec. 1864............... 26
  Term of office, sec. 1864............... 26
  Oath of office, sec. 1878.... 27
  Residence, sec. 1865. 26
  To district the territory, sec. 1914 41

JUDGES of District Court.
  Shall appoint clerks, sec. 1871......... 26
  To hold courts in counties, sec. 1874 . 27

JUDICIAL Districts.
  Judges to divide territory, sec. 1869, p. 26, sec. 1914......................... 41
  Territory divided into four, sec. 2.... 55
  Judicial power, how vested, sec. 1907. 40

JURISDICTION.
  Territorial limits of, sec. 1839 20

JUSTICES of the Peace.
  To be elected, sec. 1856............... 24
  Jurisdiction, when title to land in question, sec. 1867... 26
  Vacancies, how filled, sec. 3. 53
  Judicial power vested in, sec. 1907.... 40
  Limit of jurisdiction, sec. 1926 41

LAND.
    See Desert Land, Timber.

LAWS.
  To be presented to the Governor for approval, sec. 1842........ 21
  If not allowed, how passed, sec. 1842. 21
  To be published, sec. 1844............. 21
  To prescribe manner of holding elections, sec. 1848.......... 23
  Of certain territories to be submitted to congress, sec. 1850................ 23

LEGISLATIVE Assembly.
  Action on vetoed bills, sec. 1842...... 21
  How constituted, sec. 1846........... 22
  Members, how chosen, sec. 1846...... 22
  Term of office, sec. 1846 22
  Biennial sessions, sec. 1846, p. 22, chap. 287.............. 48
  To fix regular sessions, sec. 1846,...... 22

PAGE.

LEGISLATIVE Assembly.
- First session of, sec. 1847, p. 22, and sec. 23 23
- Subsequent sessions and elections, sec. 1848 23
- Not to enact local or special laws, chap. 818 31
- Apportionment of, sec. 1849, p. 16, chap. 329 51
- Compensation of members, chap. 329 51
- Compensation of officers, sec. 1861, p. 17, chap. 329 51
- Members prohibited from holding certain offices, sec. 1854 23
- Certain officers not to be members, sec. 1854 23
- Sessions of, not to be held when, sec. 1886 29
- Expenses not to exceed annual appropriation, sec. 1888 29
- Private charters and special privileges not to be granted by, sec. 1889 29
- May enact general incorporation laws, sec. 1889 29
- May pass general incorporation acts for certain purposes, sec. 5 33
- Expenses defrayed, how, sec. 1940 42
- Convened, when, sec. 1876, p. 27, chap. 287 48
- Words in act prohibiting grants of private charters, &c., construed, chap. 168 51
- Number of members limited, chap. 329 51
- Subordinate officers limited, chap. 329 51
- New apportionment to be made, chap. 329 51
- Fees of secretary to be fixed by, chap. 329 51
- Length of sessions, sec. 1852 54
- Payment of printing for, chap. 389 54

LEGISLATIVE Power.
- Extended to all rightful subjects of legislation, sec. 1851 23
- Except to dispose of soil, sec. 1851 23
- Except to impose tax on U. S. property, sec. 1851 23

MARRIAGE.
- Certificate of, sec. 9 36
- Proof of, secs. 9, 10 36

MARSHAL. See U. S. Marshal.

MILEAGE.
- Of members of legislature, sec. 1943 42

MILITIA.
- Officers to be elected, sec. 1856 24

MONTANA.
- Laws of, not to be submitted to Congress, sec. 1850 23
- Penitentiary, sec. 1892 30
- Boundaries and establishment, sec. 1903 40
- Delegate must be a citizen of U. S., sec. 1906 40
- Judicial power in, sec. 1907 40

MUNICIPAL Corporations.
- Power of incurring indebtedness limited, sec. 4 32

NON-RESIDENTS.
- Taxation of land, etc., sec. 1851 23

OATHS.
- Official, sec. 1878 27
- Where administered, chap. 88 48

OFFICERS.
- Commissioners of, sec. 1841 20
- Township, district and county to be elected or appointed, sec. 1857 24

OFFICERS.
- Territorial, appointed by governor, sec. 1857 24
- Term of office of first appointees, sec. 1857 24
- Term of office of, appointed to fill vacancies, sec. 1858 24
- Qualifications of, sec. 1859 24
- Of legislative assembly, chap. 329 51
- Oath of, sec. 1878, p. 27, chap. 88 48
- No salary when absent, unless, sec. 1884 28
- None until enters upon duties of office, sec, 1941 42
- Securities for moneys entrusted to them, sec. 1951 43
- Salaries when to commence, chap. 88 48

PARDONS.
- Governor may grant, sec. 1841 20

PENITENTIARY.
- Under care of marshal, sec. 1892 30
- Attorney general to regulate, sec. 1893 30
- Funds to pay expenses, sec. 1894 30
- Territorial convicts imprisoned in, at Territorial cost, sec. 1895 30
- Amendment of act transferring control of to certain territories, sec 1-2. 45

PRACTICE in Courts.
- Common law and chancery as prescribed by code, sec. 1 44
- Code practice confirmed, sec. 1 44
- Jury trial in law cases, sec. 1 44

PRE-EMPTION.
- See Desert Lands.

PRESIDENT OF UNITED STATES.
- May receive assent of Indian tribes to include their country within territorial boundaries, sec. 1839 20
- Decision in respites, sec. 1841 20
- Officers appointed by, sec. 1877 27

PRINTING.
- Limitation on expense of, sec. 1878 p 27, chap. 329 51

PRINTER
- Public, sec. 1844 21

PROBATE COURT.
- Judicial power vested in, sec. 1907 40
- Jurisdiction of, sec, 1932 42
- Appeals from, to district court, sec. 1932 42

RACE.
- Equality before the law, sec. 1 46
- See Rights.

RAILROADS,
- Utah Northern, act concerning, chap. 362 52

REGISTER in Chancery.
- Clerk of district court to be, sec. 1872. 27

RELIGIOUS corporations, sec. 1890 29

REAL ESTATE.
- Aliens may not acquire or hold in territories, chap. 340 33
- Same; exception, chap. 340 34
- Certain corporations prohibited from acquiring or holding, sec. 2 34
- What may be owned by railroad, canal and turnpike corporations, sec. 3 34
- Other corporations may own 5,000 acres, sec. 3 ....
- Forfeiture of lands unlawfully held, sec. 4 34

PAGE.

REPRESENTATION.
- Apportionment of, sec. 1849 p 23 chap. 329 51

RESPITE.
- Governor may grant, sec. 1841 20

RIGHTS.
- Act concerning, secs. 1-5 46
- Of persons regardless of color, race or servitude, sec. 1 46
- Civil and legal, to be protected, sec. 2 46
- Punishment for violating act concerning, sec. 2 46
- Parties injured to elect mode of procedure, sec. 2, 46
- U. S district and circuit courts to have exclusive jurisdiction, sec. 3 47
- Officers specially required to institute proceedings, sec. 3 47
- Civil actions in such case not to be defeated, sec. 3 47
- Penalty when officer wilfully fails, sec. 3 47
- Persons otherwise qualified to serve as jurors not to be disqualified by reason of race, color, etc. sec. 4 47
- Officer failing to summons or select as jurors such persons, to be punished, sec. 4 47
- Supreme court of U S. to review all proceedings, sec. 5 48

SALARIES.
- Of officers, secs. 1879, 1880, 1881 1882 28
- Quarterly payments, sec. 1882 28
- No salary when absent, unless, sec. 1884 28
- No salary until duties entered upon, sec. 1941 42
- Payment to commence, chap. 88 48

SCHOOL Lands.
- Sections 16 and 36 reserved, sec. 1946. 42

SEAT of Government.
- How located, sec. 1885 29
- How changed, sec. 1945 42

SECRETARY of the Territory.
- Residence, sec. 1843 21
- Term of office, sec. 1843 21
- Acting governor when, sec. 1843, 21
- General duties of, sec. 1844 21
- Extra compensation prohibited, sec. 18855 24
- Appointment of, sec. 1877 27
- Official oath, sec. 1878 27
- Record official oaths, sec. 1878 27
- Public moneys, disbursement of, sec. 1940 42
- No salary until, sec. 1941 42
- Fees of, from Territory, chap 329 51

SECRETARY of Treasury.
- To estimate expenses of legislature, etc,, sec. 1940 42
- Prescribe manner of giving security by officers, sec. 1951 43

SECURITY.
- Certain officers to give, sec. 1951 43

SUPREME COURT.
- Constituted, how, sec. 1864 26
- Judges of to hold one term annually at seat of government, sec. 1864 26
- Additional Justice for, sec. 1 55
- Judge of, not to sit in appeals from his decisions, sec. 1 55
- Chancery and common law jurisdiction, sec. 1868 26
- Apellate, jurisdiction of, sec. 1869 26
- No jury trial, sec. 1869 26
- Power to appoint clerk, sec. 1870 26
- Judicial power vested in, sec. 1907 40

PAGE.

SUPREME COURT of U S.
- Writs of error, of habeas corpus and appeals, sec. 1909 p 41, sec. 2 44
- Appellate, jurisdiction of, sec. 2 44
- To review all proceedings under civil rights law, sec. 5 48

TAXATION.
- Of U. S. property prohibited, sec. 1851 23
- Of land of non-residents, sec. 1851 23

TERM OF OFFICE.
- See Officers; Governor; Legislative Assembly.

TERRITORY.
- Indian territory recognized by treaty not included within the boundaries, but excepted therefrom, sec. 1839 20
- Jurisdiction limited, sec. 1839 20
- Executive, power of, sec. 1841 20
- Secretary of, sec. 1843 21
- Not to subscribe to the capital stock of any corporation, sec. 2 32
- Limit to power of incurring indebtedness, sec. 3 32

TESTIMONY.
- see Witnesses.

TIMBER.
- No moneys appropriated to be used in collecting, charge for wood or timber cut, chap. 76 50
- Exported liable to seizure, chap. 76. 50
- Bona fide residents may cut timber from mineral lands, chap. 150 50
- Act not to apply to railroad corporations, chap. 150 50
- Register and receiver, duties of, sec. 2 50
- Penalty for violating act relative to, sec. 3 51

UNITED STATES.
- Officers of, not to be members of Legislative Assembly sec. 1854 23
- Not to be charged with expenses of county courts, sec. 1874 27

UNITED STATES ATTORNEY.
- Appointed and term of office, secs. 1875, 1877 27
- Salary of, secs. 1880, 1882 28
- Fees and costs allowed. how paid, sec. 1883 23

UNITED STATES MARSHAL.
- Appotnted, term of office and duties, secs. 1876. 1877 27
- Salary of, sec. 1881 28
- Salary, when paid, sec. 1882 28
- Fees and costs allowed, how paid, sec 1883 28
- Penitentiary in charge of, sec. 1892. 30
- Compensation therefor, sec. 1893 30

UTAH AND NORTHERN R. R. CO., chap. 362 52

VACANCIES.
- How filled, sec. 1858 24

VETO POWER of Governor, sec. 1842 21

VOTERS.
- Qualifications of, secs 1859. 1860 24

WATER.
- On desert land, chap. 107 48
- Surplus water free for other purposes, sec. 1 48

WITNESSES.
- Persons charged with crime may testify, chap 37 49
- Husband or wife may testify in prosecution for polygamy, sec. 1 35
- May be attached and recogizance of, sec. 2 35

WRITS OF ERROR AND APPEALS, sec. 1869 26
- Allowed to supreme court of U. S., sec. 1909 41
- To supreme court of territory, sec. 1910 41
- In jury trials and other causes, sec. 2 45
- In what cases may be taken, secs. 1, 3 54

WRITS OF HABEAS CORPUS, sec. 1909 41

Index to Revised Statutes.

PAGE.

ABANDONED HEART,
- Circumstances of assault showing, sec. 60 512
- How shown, sec. 20. 505

ABANDONMENT.
- Cause for divorce. sec. 999 919
- Of child by parents. sec. 57 511

ABATEMENT.
- Action not to abate by death. marriage, etc., sec. 22.. 63

ABDUCTION.
- Of woman, sec 55 511

ABETTOR.
- Of crime, sec. 12 502
- Of escape of convict, 123, 124... 533
- Of escape of person in custody, sec. 126.... 533

ABORTION.
- Defined and punished, sec. 42. 508
- Giving medicine to produce, sec. 42 508
- Produced by instruments, sec. 42 . 508

ACCESSORY.
- After the fact, sec. 177 437
- After the fact, how punished, sec. 13 502
- Before the fact, sec. 176 437
- How charged, tried and convicted, secs. 176, 177.... 437
- Indictment of, sec. 186 438
- When deemed principal, sec. 12 .. 502
- Where punished, sec. 35. 410

ACCIDENT.
- Injury by, without intent, not criminal, sec. 9 501

ACCOUNT.
- Administrator failing to settle, sec. 255.... 338
- Copy of in justices court, 774 260
- Current, when cause of action accrues, sec. 48.... 70
- How sued in justice's court, sec. 740 252
- Items of, need not be set forth, sec. 101 851
- Limitation of action upon, sec. 44 p. 69, sec. 48.... 70
- Of executor or administrator, secs. 254-272....
- Same, final and settlement, secs. 282, 343
- 283 338
- Of sales by administrator, sec. 201 .. 326
- Of special administrator, sec, 101.. . 297
- Settlement of by executors or administrators, secs. 254-270.... 338

See Executors and Administrators.
Estate of Decedents.

ACCOUNTS and Settlements of County Officers.
- Delinquent, proceedings in regard to, sec. 968,-972.... 908

PAGE.

ACCOUNT and Settlements of County Officers.
- May be required and audited monthly, secs 965, 966.... 907
- Penalty for failure, secs. 968-970 ... 908
- To settle with county commissioners and pay over moneys, sec. 967.. 908

See Officers and Offices.

ACCOMPLICE.
- Testimony of sec. 317 463

ACCUSED.
- Must prove mitigation, sec. 40... . 508
- Rescued before conviction, secs. 122-127.... 533

ACKNOWLEDGEMENTS.
- Of acts of incorporation, sec. 446.... 724
- Of conveyances, who may take, sec. 524.... 199
- Penalty for false certificate, sec. 140 537
- Ssecretary of territory may take, sec. 1965.... 1206
- See Conveyance of Realty.

ACQUITTAL.
- Because of variance, effect of, sec. 223 444
- On merits, sec 224.... 444
- When a bar to indictment, sec. 1225, p. 444, sec. 318.... 463

ACTION—CIVIL.
- Abatement of, sec. 22... 63
- Against associates under common name, sec 25 64
- All persons interested may be joined as plaintiffs. sec. 15.... 62
- By assignee, defences to, sec. 5 61
- By executor, trustee, &c., sec. 6.... 61
- By married woman, sec. 7.... 61
- By parent or guardian, for seduction, sec. 12 61
- Defendant, when and how discharged before answer, sec. 23.... 63
- Facts not in issue, how tried, sec. 3 . 59
- For causing death to adult, sec. 14. . 62
- For injury or death of child, sec. 13.. 62
- For possession of real property, who made defendant, sec. 17.... 62
- Same, when writ of possession to issue, sec. 17 62
- Guardian, how appointed, sec. 10... 61
- In whose name prosecuted, sec. 4.... 60
- Infant to appear by guardian, sec. 9.. 61
- Intervention, authority and proceedings for, sec. 24.... 64
- Joinder of parties to determine title to real estate, sec. 18.... 62
- Joinder of plaintiffs or defendants, sec. 19.... 63
- Joinder of parties severally liable, sec. 20 63
- Of parties to, how designated, sec. 2 59
- One person may sue or defend for all, when, sec. 19.... 63
- Only one form of, sec 1.... 59

Page.
ACTION—Civil.
  Parties in interest made defendants, sec. 16 62
  Rights of parties in controversy, sec. 26 64
  Rights of parties, jointly and severally, sec. 20 63
  Unmarried woman may bring for duction, sec. 11 61
  Wife may defend in her own right, sec. 8 61
  Joinder of tenants in common, joint tenants and co-parceners as plaintiffs, sec. 21 63
  Not to abate by death or disability, sec. 22 63
  How continued in such cases, sec. 22. 63
  Person applying to be made party, proceedings, sec. 27 64
  Who made parties, sec. 22 63

Limitation of—
  After entry on real estate, sec, 31 66
  Against party out of territory, sec. 50 70
  After reversal of judgment, sec 51 70
  Assault, promise, or false imprisonment, sec. 45 69
  By or against territory, sec. 49 70
  Concerning personal property, sec. 42 69
  Concerning real estate, secs. 29, 30 .... 65, 66
  For escape of prisoner, sec. 45 69
  For libel, sec. 45 69
  For money deposited, &c., sec. 46 69
  Founded on instrument, of writing, sec 42 69
  For recovery of mining claims, sec. 40 68
  In cases arising out of territory, sec. 55 70
  May be changed, when, secs. 61-62 72
  New promise or payment, effect of, secs. 53-54 70
  On account, unwritten contract sec. 44 69
  On judgment or decree, sec. 41 68
  Other than to recover realty, sec. 41 68
  Presumption as to possession, sec. 32 66
  Relief not otherwise provided for, sec. 47 69
  Stayed by injunction or prohibition, sec. 52 70
  Waste or trespass, sec. 42 69
  When may be commenced, sec. 28 65
  When must be commenced after disability removed, sec. 39 67
  Who not affected by statute of limitation, sec. 39 67
  When right of accrues on open account, sec. 48 70

Place of Trial, secs. 56,65-71 73
  Against county, where tried, sec. 58 72
  Concerning real property, sec. 56 71
  For offences on river, lake, etc. sec. 57 71
  For penalties, for forfeitures, or against officer, sec. 57 71
  In case county attached to another for judicial purposes, where tried, sec. 60 72
  May be changed, when, secs. 61-62 72
  Real estate in another county, copy of judgment transmitted and entered, sec. 65 73
  Same in cases not above enumerated, sec. 59 72

Manner of commencing, sec. 66 74
  Alias summons, sec. 69 75
  City, county or town, how summoned, sec. 72 76
  Endorsement of complaint, summons, how issued, sec. 67 74
  Notice of pendency of suits, sec. 70. 75
  Summons, contents, and to whom directed, sec. 68 74
  See Arrest and Bail, Claim and Delivery, Injunctions, Attachment.
  Service and return of summons, sec. 71, p. 75, sec. 74 77

Page.
ACTION—Civil.
  Affidavit on return of summons, what to state, sec. 79 79
  Proof of service of summons, sec. 78. 78
  Publication of summons, sec. 74 77
  Rule when one joint defendant served, sec. 77 78
  Service on non-resident or absent person, sec. 73 77
  When jurisdiction is acquired, sec 80 79

  See Foreclosure, Nuisance, Waste, Trespass.

Pleadings in, secs 81-119 79-89
  Against sureties for return of property, sec. 164 99
  Against sureties on bail bond, sec 132 92
  Change of venue, secs. 62, 63 72
  Complaint, what to contain, sec. 84. 80
  Pleadings defined, sec 81. 79
  Same, forms prescribed, sec 82 79
  Same, what allowed, sec. 83 79
  Suit if brought in wrong county, where tried, sec 61 72
  Transfer of papers and jurisdiction when venue changed, sec 64 73
  When may arrest person, secs 120, 121 90

Receiver and Referee.
  Receiver may bring, sec 233 117
  Who may be, and how appointed, secs. 229-231 115

Attachments—secs. 181-205 103
Judgment.
  How far may grant relief, sec. 241 118
  Judgment defined, sec. 238 118
  Same, how may be given, sec. 239 118
  Same, in case of several defendants, sec. 240 118
  On default, sec. 245 119
  Rendered upon merits, secs. 235-243 119
  Reference of accounts by court, sec. 245 119

Of the trial.
  Issues defined, and how, arise and trial of, secs. 246-254 120
  Postponement of trial, sec. 253 121
  Same, testimony may be taken, sec 254 121
  Against persons or corporations owing judgment debtors, sec 356. 157
  Confessing of judgment, secs 465-467 184
  Concerning real estate, secs 366-375 159
  Exceptions, secs. 289-294 183
  For usurpation of office or franchise, secs. 410-417 171
  For nuisance, sec. 361 159
  For partition of real estate, secs. 377-409 163
  For trespass on timber, sec. 363 159
  For waste, sec. 362 159
  Judgments, how given and entered, secs 302-311 138
  New trial, secs. 295-301 134
  Reference and trial by referees, secs. 283-288 131
  Submission of controversy without, secs. 468-470 175
  To foreclose mortgage, secs. 338-360 157
  Same, who made parties, sec. 358 158
  Same, disposition of surplus money, sec. 359 158
  Trial by court, secs. 279-282 129
  Trial by jury, how waived, sec. 279. 129
  Trial by jury, secs. 255-261 122
  Vacancy in court, not to affect, sec. 525 199
  Appeals, secs. 418-443 172
  Appeals from district to supreme court, when allowed, sec. 444 180
  Appeals from probate to district court, secs. 445-458 181

ACTION—Civil.
- Against joint debtors, secs. 459-464 ... 183
- Arbitration, secs. 472-481 ... 186
- Appearance, what deemed, sec. 491 ... 190
- Defendant offering to compromise, sec. 471 ... 186
- Notices and filing and service of papers, secs, 487-493 ... 189

See costs.

- By sheriff on identifying bond. sec. 533 ... 200
- Certiorari and mandamus, secs. 554-564 ... 204
- Contempts, secs. 584-596 ... 210
- Costs and compensation in, secs 494-522 ... 191
- Eminent demain, secs. 597-615 ... 213
- Evidence, secs. 616-646 ... 221
- Examination of parties to, secs. 668-671 ... 234
- For discovery, not allowed, sec. 668 ... 234
- Limitation of, when expired out of the territory, sec 538 ... 201
- Mandamus, secs. 565-578 ... 206
- Not affected by vacancy in office of judge or justice, sec. 525 ... 199
- Prohibition, secs. 579-583 ... 209
- Register of, clerk to keep, and form of, sec. 534 ... 201
- Sale of attached property before judgment and disposition of proceeds, sec. 541 ... 202
- When judge not to preside, sec 547 ... 203

See witnesses, secs. 647-653 ... 229

- Affidavits in, secs. 672-677 ... 235
- Depositions, secs. 678-685 ... 236
- Oaths and affirmations, secs 693-695 ... 241
- Perpetuation of testimony, secs. 686-692 ... 239

Probate Court.
- Forcible entry and detainer, secs. 716-733 ... 245
- Jurisdiction of, sec 708 ... 244
- Powers of, sec 707, p 244, sec. 713 ... 245
- When certified from to district court, sec. 711 ... 245
- In justice's courts secs. 734-830 ... 250
- Bills of exceptions, how prepared, signed and settled, sec. 294 ... 134
- Change of venue, sec 780 ... 262
- General provisions, secs, 804-830 ... 268
- Guardians, how appointed, sec. 741 ... 252
- How commenced, sec. 740 ... 252
- Judgment and execution, secs 791-803 ... 264
- Pleading and trial, secs. 768-790 ... 259
- Regarding real property to be certified to distsict court, sec. 779 ... 261

Under Probate Practice Act.
- Limitation for recovery of estate sold by executor or administrator, secs, 221, 222 ... 330
- On claims against decedents secs. 157-159 ... 313
- To recover estate embezzled or alienated, secs. 129-132 ... 303
- Against executor or administrator for waste or conversion, sec. 228 ... 332
- By and against administrator or executor, secs. 230, 231 ... 332
- For recovery of real estate sold by guardian, limitation of, sec. 405 ... 374
- On guardian's bond, sec. 404 ... 374
- Public administrator to bring, sec. 339 ... 358
- Rights of executor or administrator to maintain, secs. 226, 227 ... 332
- To recover estate fraudulently conveyed by decedent, secs. 233, 234 ... 333

ACTION—CRIMINAL.
- Attorneys, compensation of, see Attorney.

PAGE

ACTION—Criminal.
- Criminal, in probate or justice's court. secs 474-530 ... 493
- Defined, sec. 1 ... 403
- Forms and rules of pleading in, sec. 162 ... 435
- For injury to persons causing death, sec. 981 ... 911
- Same, who may bring, measure of damage and limitation of, sec. 982 ... 912
- No person compelled to be witness against himself, sec. 11 ... 405
- Prosecuted in name of territory, sec. 2 ... 403
- Rights of defendant in, secs. 8-12 ... 404
- Trial, secs. 270-345 ... 456
- Upon bail, bond or recognizance, secs. 257, 258 ... 451
- Upon recognizance, not defeated, when, sec. 108 ... 424

See Appeals

See Indictment.

See Arrest and Bail.

See Attachment.

See Attachment of Boats.

ACTS of Legislature.
- How designated in enacting clause, sec. 1309 ... 1010
- When to take effect, secs. 1307, 1308 ... 1010

ACTS Repealed.
- For corporations other than for pecuniary profit, sec. 676 ... 807
- Of acts conflicting with criminal law, sec. 286 ... 585

See Repealing Provisions

ADJUTANT GENERAL.
See Militia.

ADJOURNMENT.
- Of court during trial, sec. 269 ... 127
- When clerk may adjourn court, sec. 531 ... 199

ADMINISTRATION.
- By whom granted, sec. 1 ... 274
- Letters de bonis non, sec. 48 ... 288
- Letters of, in case of lost will, secs. 39, 40 ... 283
- Letters of, with will annexed, how issued, sec. 51 ... 288
- Power of probate court, over, sec. 707 ... 244
- To whom granted, secs. 55-60 ... 289
- When granted, secs. 6, 7 ... 276
- When letters with will annexed, to issue. sec. 45 ... 287
- Same, objections to petition for, sec. 46 ... 287
- Absent heirs and discharge of administrator, secs. 306-313 ... 350
- Accounts, executors and administrators, secs. 247-272 ... 337
- Claims against the estate, secs 147-170 ... 310
- Conveyance of real estate, secs. 236-246 ... 334
- Distribution and partition, secs, 294-305 ... 347
- Disqualified judges and transfer of administrators, secs. 109-112 ... 278
- Embezzlement and surrender of property, secs 129-132 ... 303
- Evidence of proof and notice, sec. 66 ... 291
- Facts proven before letters granted, sec. 68 ... 291
- Final settlement and distribution, secs. 289-293 ... 346
- Form of letters, secs. 52-54 ... 288
- Form of letters with will annexed, sec. 53 ... 289
- Hearing petition and letters issue, sec. 65 ... 291
- Inventory, appraisement and possession of estate, secs 118-128 ... 301

Page.

- Letters granted at request of those entitled, sec. 69 ... 292
- Letters of, in case executor absent from territory, sec. 49 ... 288
- Notice given when petition filed, sec. 63 ... 291
- Orders, decrees, process, minutes, records, trials, and appeals, secs. 314-332 ... 353
- Partial distribution, secs. 284-288 ... 345
- Payment of debts of estate, secs. 273-283 ... 342
- Partnership estates, sec. 178 ... 319
- Petition and requisites for, sec. 61 .. 290
- Petition for letters and action thereon, secs 61-69 ... 290
- Provisions for support of family, secs. 133-139 ... 305
- Powers and duties of executors and administrators, secs 225-235 ... 331
- Removal and suspension of adminstrator, secs 113-117 ... 299
- Revocation of letters, secs 70-73 ... 292

See estates of Decedents.

- Sales of property, secs. 171-224 ... 318
- Special administrators, secs. 94-101 . 296
- The homestead, secs. 140-146 ... 307
- To whom letters of, granted, secs. 55-56 ... 289
- Same; discretion of court as to, secs. 57-58 ... 290
- Who cannot administer, secs. 59-60. 290
- When letters granted applicant, though others entitled, sec. 67 ... 291
- When letters of, granted, sec. 62. ... 291
- When petition objected to, sec 64 ... 291

ADMINISTRATOR.

- Administrator with will annexed, powers of and letters to, sec 51 ... 288
- Same, oath of sec. 74 ... 292
- Same, bond of, secs. 75-93 ... 293
- Costs of suit by or against, how paid, sec. 505. ... 194
- May sue without joining beneficiary, sec 6 ... 61
- No rights as to homestead, sec. 327. . 148
- Powers cease when probate of will revoked, sec. 34 ... 283
- Power of probate court over, sec. 707. 244
- Restrained from injury to claimants under last will, sec. 40 ... 284
- Seal of court necessary on appointment of, sec. 5 ... 275
- Special appointment of, secs. 95-97. . 294
- When court to appoint in place of executor. sec. 11 ... 278
- Appointment to fill vacancy, secs. 105, 106 ... 297
- Commission allowed. sec. 253 ... 338
- Duties as to inventory and appraisement, secs. 118-126 ... 301
- Letters revoked if will found, sec. 102 297
- Same, account of, sec. 102 ... 297
- May sue on bond of executor or former administrator, sec. 230 ... 332
- Removal and suspension of, secs. 113-117 ... 299
- Recovery of estate embezzled or alienated, secs. 129-132 ... 303
- Rights and duties as to property and actions, sec. 127 ... 303
- Rights and duties as to possession of real estate, secs. 127, 128 ... 303
- Special duties of, secs 99-101 ... 296
- Same, bond of, sec. 98 ... 296
- Validity of acts, sec. 107 ... 298
- With will annexed, authority of in such case, secs. 103-104 ... 297
- Same, one incapable, other to act, sec. 104 ... 297

See Public Administrator.
See Executors and Administrators.

ADMINISTRATRIX.

- Married woman may be, sec. 60 ... 290

Page.

ADMISSIONS.

- See Evidence, Witnesses.

ADOPTION.

- Minor child may be adopted, sec. 1.. 587
- Age of person adopting, sec. 2 ... 587
- Husband or wife must consent, sec. 3 587
- When consent of parent must be had, sec. 4 ... 587
- Consent of child over 12 years old, sec. 5 ... 587
- Agreement to be executed, sec. 6. . 587
- Duty of probate judge, sec 7 ... 587
- Nature of the relationship, sec. 8. 588
- Parental duties cease, sec. 9.. .. . 588
- Adoption of illegitimate child by its father, sec. 10 ... 588
- Punishment for cruelty to child, sec. 11 ... 588
- Punishment for employing child as acrobat, etc., sec. 12 ... 588
- Punishment for employing child to beg, sing. etc., on highways, sec. 13 589
- Punishment for employing child in saloon, etc., sec 14 ... 589
- Punishment for employing child in underground mine, etc., sec. 15. .. 589
- Oath and warrant in case of violation of this law, sec. 16 ... 589
- Disposition of child in such case, sec. 17 ... 590
- Agents of societies for protection of children may be appointed as police officers, sec. 18 ... 590
- Child may be committed to care of humane society sec 19 ... 591
- Child deserted by parents may be adopted, sec. 20 ... 591
- Child committed to care of county commissioners in certain cases, sec 21 ... 591
- Punishment for taking female child for purpose of prostitution, sec 22 592
- Punishment for permitting child to enter saloon, sec 23 ... 592

ADULTERATION

- Of butter and cheese, secs 178-180 ... 550
- Of drugs and medicines, sec. 181.. . 551
- Of provisions or liquors, penalty for, sec. 177 ... 549

ADULTERY

- Defined and punished, sec. 161 ... 545

ADVERSE PARTY

- Adverse possessions, secs 32-37.. ... 66
- May be examined, sec. 669 ... 234
- Refusing to testify, sec. 671 ... 235
- See Limitations.

ADVERSE CLAIM.

- To real estate, how determined, secs. 366-375 ... 159
- Same, costs, by whom paid, sec. 367.. 160

ADVANCEMENTS.

- Effect of on rights of heirs omitted in will, sec 469 ... 385
- Gifts and grants, when are, sec. 546 399
- To be taken towards share of estate, secs 544-545 ... 398
- Value of, how estimated, sec 547 ... 399
- When taken as redemption of general legacy, sec 508 ... 390

AFFIDAVIT.

- Of printer as to publication of document, etc., sec. 677 ... 236
- Copy to defendant arrested, sec 126.. 91
- For arrest in civil action, sec 123 ... 91
- For claim and delivery, sec 157 ... 97
- For change of venue in district court, secs. 61-62 ... 72
- For injunction, sec. 173 ... 100
- For publication of summons, sec. 73. 77
- For writ of attachment, sec. 181 ... 103
- For recovery of personal property, sec. 117 ... 88

PAGE.

AFFIDAVIT.
On motion for new trial, sec. 297.... 135
Of service of summons, sec. 78........ 78
Of sureties for arrest on bond for, sec. 124.............................. 91
To substitute defendant in action, sec. 23................................ 63
To vacate or reduce bail, sec. 145..... 95
Verifying pleadings, sec. 96.......... 84
As to unknown parties in partition, sec. 382.............................. 165
As to property of judgment debtor liable to execution, sec. 351........ 156
Authentication of, sec. 675.......... 235
Before whom made, sec. 524.......... 199
Before whom taken in foreign country, sec. 674............................ 235
Before whom taken out of territory, sec. 673.............................. 235
Before whom taken in territory, sec. 672.............................. 235
Filing and evidence of, sec. 676....... 235

See Evidence, Witnesses

For summons against joint debtors, sec. 461.............................. 184
Of charge of contempt, when to be made, sec. 586........................ 211
Of sureties to undertaking required, sec. 540.............................. 202
Of sureties on appeal from probate court, sec 453........................ 182
Of sureties to undertaking on appeal, sec. 430.............................. 176
Of worth of sureties, sec. 540......... 202
When valid without title, sec. 537.... 201
For arrest in justice's court, sec. 747. 254
For attachment in justice's court, sec. 754.............................. 256
For change of venue of criminal cause in justice's court, sec. 748... 255
For continuance in justice's court, sec. 782.............................. 262
For claim and delivery in same, sec. 759.............................. 257
For new trial in justice's court, sec. 820.............................. 271
Of claimant against estate, sec. 151.. 311
Secretary of territory may take, sec. 1965.............................. 1206

See Administrators
See Executors and Administrators.
See Oath.

AFFIRMATIONS.
Form of and penalty for false, sec. 695 241
See Oaths.

Definition of, sec. 539................ 201
Of witnesses in criminal action, sec 16.............................. 503
Punishment for false, sec. 16........ 503

AFFRAY.
Penalty for, sec. 143................. 538

AGE.
At which person may commit rape, sec. 46.............................. 509
At which person may contract, sec. 1204.............................. 981
Of female as to commission of rape, sec. 46.............................. 509
Of infant criminally liable, sec. 4.... 500

AGENT
Duties and liability of, secs. 308, 309.. 351
For non-resident distributee of estate sec. 307.............................. 351
Of claimant against estate, sec. 151... 311
Of boats, contracts of, sec. 206....... 111
When may be arrested, sec. 121..... 90
When may execute conveyance or contract, sec. 220, p. 652, sec. 228... 653

PAGE.

AGREEMENTS.
Construction of, sec. 628.............. 224
Destroying or defacing, penalty, secs. 114-118.............................. 530
Fighting by, sec. 143.................. 538
Fighting duels by, secs. 22, 23....... 505
To be admitted to record, sec. 253.... 660
To convey real estate, how acknowledge, sec. 238.............................. 656
To fight a duel, sec. 43............... 509

See contract written Instructions.

AIDING.
Commission of crime, sec. 12......... 502
Escape of prisoners, secs. 123-126.... 533
Officers to make arrests, sec. 175..... 549

ALIMONY.
Court may decree, when, sec. 1004... 920

ALIENS.
Property inherited by, how disposed of, sec. 554.............................. 400
Rights to property by succession, sec. 553.............................. 400

ALIENATION.
When not to affect claimant, sec. 374.............................. 161

ALIAS SUMMONS.
Issuance of, sec. 69................... 75

ALLEGATION.
Each party to prove affirmative, sec. 641.............................. 226
Evidence to correspond with, sec 543. 226
Only material to be proven, sec. 639. 226
What deemed material, sec. 110..... 87
When deemed admitted in pleading, sec. 109.............................. 87

See Pleading.

ALLEY.
See Road.

ALTERING.
Mark or brand, punished, sec 86...... 519
Of boundary or land mark, sec. 91... 521
Writings when forgery, sec. 96....... 523

AMENDED Complaint.
How served, sec. 115.................. 88

AMENDMENT.
By respondent on appeal, sec. 432.... 177
Of pleadings, secs. 112-116............ 87
Of pleadings in justice's court, sec. 778.............................. 261
Of pleadings when defendant's true name is discovered, sec. 118......... 89
To pleadings in forcible entry or detainer, sec. 732....................... 249
When demurrer waived, sec. 433.... 177
Where proof varies from pleading, sec. 112.............................. 87

See Pleading.

AMMUNITION.
Sale of to hostile Indians, sec 211..... 559

ANCESTORS.
Inheritance by, sec. 534............... 395

ANIMALS.
Driving off or permitting the same, sec. 95.............................. 522
Stealing dogs, punished, sec. 80...... 517
Carrying disease among sheep, sec. 277.............................. 582
Cattle and sheep driven to be branded or marked, sec. 31................. 593

PAGE

ANIMALS
Certified copy of pedigree, sec. 35 593
Cutting off ears of, sec. 235 569
Damages to trees by, sec. 2648 1129
Driving from range. sec. 235 569
Malicious cruelty to, sec. 215 560
Marking or branding of another, sec. 235 569
Penalty for selling contrary to law, sec. 28 593
Poisoning, sec. 214 560
Ranchman or stable keeper not to use, sec. 271 581
Sale of by auction, secs. 525-528 593
Sheep parasite causing disease not to be communicated; sec. 277 582
Skinning dead animals, sec. 272 581
Stock register to be kept, sec. 25-28 593
Stallions running at large prohibihibited, sec. 292 581
Same; may be castrated, sec 273 581
Thoroughbred stock exempt from taxation, sec. 29 593

See Live Stock Killed or Injured by Railroads.

See Bounty.

Governor to nominate stock commissioners, sec 32 595
Commissioners must be owners of stock, sec. 33 595
Governor to notify the commissioners of appointment, sec. 34 595
Board of commissioners to elect a president and appoint a secretary, sec. 35 596
Commissioners and secretary to receive no compensation for their services, sec. 36 596
Duties of stock commissioners, sec. 37 596
Board of commissioners may appoint stock inspectors and detectives, sec. 38 596
Stock inspectors to give bonds, sec. 39 597
Duties of stock inspectors, sec. 40 597
Inspectors and detectives to be under control of the commissioners, sec 41 597
County commissioners to levy a tax annually, sec. 42 597
Levy of tax for 1887, sec. 43 598
Persons exempt from the tax, sec. 44 598
Board of stock commissioners to audit bills, etc., sec. 45 598
Division of the territory into districts, sec. 46 599
Governor to appoint a veterinary surgeon, sec. 47 599
Duties of veterinary surgeon, sec 48. 599
Veterinary surgeon may quarantine cattle, sec. 49 600
Veterinary surgeon may order killing of cattle, sec. 50 601
Method of apprisal of cattle killed, sec. 51 601
Veterinary surgeon to report annually to governor, sec. 52 602
Governor may prohibit importation of cattle from infected sections, sec. 53 602
Owners of diseased cattle to report, sec. 54 603
Regulations to be observed concerning diseased cattle, sec. 55 603
How claims for cattle killed may be adjusted, sec. 56 604
Compensation of veterinary surgeon, inspectors, etc., sec. 57 605
Liability of territory for stock killed limited, sec. 58 606
County commissioners to levy tax annually, sec. 59 607
Veterinary surgeon to select places where stock shall be quarantined sec. 60 607

PAGE.

ANIMALS.
Proceeds of fines—how disposed of, sec. 61 607
Veterinary surgeons may appoint deputies, sec. 62 607
Duty of prosecuting attorney and court, sec. 63 608
Duty of territorial veterinary surgeon, sec. 65 609
Tax for sheep inspector and indemnity fund, sec. 66 609
Qurantine, sec. 67 609
Inspection and certificate, sec. 68 610
Sheep under quarantine not to be moved without written consent of other sheep owners, sec. 69 610
Importation from infected districts prohibited, sec. 70 610
Owner to report diseased sheep, sec. 71 611
Surgeon to make annual report, sec. 72 611
Surgeon may employ assistants sec. 73 611
Certain laws repealed, sec. 74 611
Rams and he goats not to run at large during certain seasons, sec. 76 612
Penalty for violation of this law, sec. 77 612
Damages may be recovered, sec. 78 612
Diseased animals prohibited from running at large—penalty, sec. 79 612
Making false pedigree punished, sec. 80 613
False statement as to pedigree punished, sec. 81 613

ANSWER.
Amendments allowed, sec. 116 88
Amended, when to be filed, sec. 115 88
Same, copy served on adverse party, sec 115 88
Allegation, when deemed admitted, sec. 109 87
Counter claim, sec. 90 82
Containing new matter, reply may be filed, sec. 94 83
Deemed an appearance, sec. 491 190
Default for want of, sec. 245 119
Denying genuineness of written instrument, sec. 97 84
Demurrer to, sec. 92 83
Disclaiming interest in real estate, sec. 367 160
Error or defect in when disregarded, sec. 119 89
In libel or slander, sec. 108 86
In mandamus, secs. 571-575, p. 207, secs. 572-575 208
In suits for partition, sec 383 165
In justice's court, secs. 772-778 259
Of judgment debtor, secs. 350, 351 155
Of new party to suit, sec. 27 64
Of joint debtors, sec. 462 184
Pleading performance of contract, sec. 104 86
Sham and irrelevant stricken out, sec. 101 85
Stricken out for not testifying when, sec. 671 235
Supplement, when may be filed, sec. 111 87
To amended complaint when filed, sec. 87 81
To complaint allowed in pleadings, sec. 83 79
Verification of, sec. 96 84
When allowed, if not personally served, sec. 116 88
When injunction allowed after, sec. 175 101
What to contain, sec. 89 82

ANNUITY.
Defined, sec 509 391
When to commence, sec. 520 393

PAGE.
ANNUITIES.

See Taxes.

APPEALS.
Copy of statement annexed, sec. 436.. 178
Damages for delay by, sec. 428........ 176
Effect of dismissal, sec. 439....... . 179
Entry of judgment, sec. 443......... 179
Extension of time for, sec. 434. . .. 178
From county commissioners, how taken, proceedings on, secs. 764.765 846
From decision upon motion for new trial, bill of exceptions required, sec. 301...... 138
From district to supreme court, when allowed, sec. 444. 180
From decision or verdict, sec. 421... 174
From interlocutory decree in partition, sec. 421 174
From judgment, sec. 421... 174
From judgment in replevin, sec. 425 175
From justices to district court, secs 822-826... 272
From judgment entered by court, sec. 280... 130
From judgment of inferior court. sec, 421. 174
From order as to change of venue, sec. 421.......... 174
From order dissolving or refusing to dissolve attachment, sec. 421........ 174
From order granting or dissolving injunction, sec. 421 174
From order granting or refusing new trial, sec. 421.... 174
From special order made after judgment, sec. 421........... 174
How taken, sec. 422........... 174
In cases of contested claims for town lots, sec. 2022.......... 1223
In what cases security dispensed with or limited, sec 428.......... . 176
In forcible entry and detainer, secs. 730, 731................ 249
Jurisdiction of district court, sec. 701................ 243
Justification of sureties, sec. 430..... 176
Order vacated or modified, sec. 419... 17[illegible]
Of the hearing, sec. 442 . ... 17[illegible]
Powers of appellate court, sec. 440-441 179
Review of order or judgment, sec. 418 173
Statement and amendments, secs. 432-436........ 177
Same, when waived, sec. 433 177
Stay of execution, secs. 424-428... ... 175
Statement settled and authenticated, sec. 435........ 178
Time allowed for, sec. 421. 174
Terms appellant and respondent defined, sec. 420.. 174
Transcript, sec. 438..... 178
Undertaking or deposit, secs. 422-432 174
When copy of affidavit annexed, sec. 437.. 178
When execution orders conveyance, sec. 426........ 175
Who may appeal, sec. 420 174
What may be reviewed, sec. 440 179

See Courts.
See Supreme Court.

APPEALS from Probate Court.
Cases in which allowed, sec. 445.. . 181
Dismissed if not prosecuted, sec. 447. 181
Hearing of, sec. 447 181
Time in which taken, sec. 446.... ... 181
Appellant and respondent defined, sec. 448........ 181
Case tried de novo, sec. 457........... 183
In certiorari, sec. 564........ 206
In civil actions, who may appeal, sec. 448 181
Justification of sureties, sec. 153...... 182
Manner of taking, sec. 450......... 181
Stay of proceedings and undertaking for same, sec. 455........ 182

PAGE.
APPEALS from Probate Court.
Sheriff to execute process, sec. 458.... 183
Transcript on, sec. 454........ 182
Time of taking under last section and how tried, sec. 449. 181
Undertaking for costs, sec, 452........ 182
Undertaking on, sec. 401........ 182
When appellant not to recover costs, sec. 456........ 183
See District Court.

Costs of, when in discretion of court, sec. 500........ 193
From decision of court on award, sec. 480 188
From judgment in agreed case, sec. 460........ 183
Memorandum of costs to be furnished clerk, sec. 512... 195
To district court, secs. 324, 325........ 354

APPEALS in Criminal Action.
Action of appellate court, sec. 404,... 477
By joint defendant, sec. 403........... 477
Effect of, by territory, sec. 399..... 477
Errors not regarded, sec. 406........ 478
Generally, proceedings in cases of, secs. 394-409........ 476
How taken, sec. 398........ 477
In criminal action, sec 395........ 476
Informality or defect, sec. 407........ 478
Judgment of affirmance, sec. 408.... 478
Of defendant in probate or justice's court, sec. 510........ 497
Same, transcript of, sec. 511.......... 497
Opinion in writing recorded, sec. 409. 478
Of owners of dams and reservoirs, secs. 990, 991........ 915
Of prosecuting witness, secs. 28, 29... 408
On reserved question, sec. 401........ 477
Procedure if case reversed, sec. 405.. 477
Stay of execution, sec. 400........ 477
To district court by territory, sec. 528 499
To supreme court, sec. 394........ 476
Time in which taken and transcript filed, sec. 397........ 476
When taken, sec. 396 476

APPEARANCE.
Before referee of lien holder in partition, sec. 387..... 166
Of defendant, waives summons, sec. 67. 74
Rights of defendant after making, sec 491 190
Voluntary, effect of, 80........ 79
When defendant deemed to have made, sec. 491. 190

APPEARANCE, and Trial.
Undertaking of, secs. 752-756........ 255

APPELLANT.
Bond of, in probate court, sec. 510... 497
Defined, sec. 420........ 174
In district court, sec. 423........ 174
Wishing statement on appeal, duty of, sec. 432... 177

APPLICATION.
For a writ of certiorari, sec. 556.... . 205
For discharge of prisoner, sec. 148.... 95
Of persons interested to be made party, sec. 27........ 64
To reduce or vacate order for bail, sec. 145........ 95
See Complaint, Petition.

For dissolution of injunction, sec. 179........ 102
For new trial, sec 297........ 135
Proceedings under, to perpetuate testimony, secs. 686-692........ 239

APPOINTMENT.
Contributing money to secure, prohibited, sec. 1067........ 939
Of receivers, sec. 230........ 116

PAGE.

APPORTIONMENT.
Of express in partition, sec. 393........ 168
Of legislature, secs. 1336-1339........... 1016
Of school taxes, secs. 1907-1910........ 1190

APPRAISERS.
Of land, etc., condemned for corporations, sec. 487..... 737

APPRAISERS of Estates.
Affidavit of, sec. 120.................... 301
Compensation of, sec. 119.............. 301
Duties of, secs. 120-124................. 301
Qualifications of, sec. 119............. 301

APPRAISEMENT.
Executor or administrator chargeable for, sec. 248....... 337
Of estates, secs. 120-126................. 301
Of lands, etc., for R. R
See Corporations, R. R.

APPRENTICE.
Minor pauper may be, sec. 1617 1088
Stealing master's goods, sec. 92 572

APPROPRIATIONS.
For collection of military stores sec. 94.......................... 617

See Law Library.

For expenses superintendent public instruction, secs. 1863-1865........... 1175
For insane, sec. 1223............... . 987

See Historical Sooiety.
See Law Library.

ARBITRATION
Appeal from decision of courts to award, sec. 480....................... 188
Award modified or corrected, sec 479. 188
Costs if submission revoked, sec. 481. 188
Hearing before arbitrators, secs. 475-476............................ 187
May be made order of court, sec 474. 187
Oath and duty of arbitrators, sec. 476.. 187
Of claims against decedents, secs. 164-165.. 314
Of the award sec. 477.................. 187
Powers of arbitrators sec. 475......... 187
Revocation of submission, sec. 481... 188
Setting aside of award, sec. 478....... 187
Suit on revocation of subminnion, sec. 481.................................. 188
Submission of controversy, sec. 472 186
Same to be in writing and to whom, sec. 473.................................... 186
Appointment, qualifications, etc , of territorial board of arbitration, sec. 82... 614
Board to visit locality of dispute and advise disputants, sec. 83......... .. 614
Application to board, notice of hearing, sec. 84......................... 615
Board to make writtten decision, sec. 85................................. 615
Binding force of decision, sec 86..... 615
Parties may agree upon arbitrators, sec. 87........ 615
Compensation of arbitrators, sec. 88 616

ARBITRATORS, See Arbitration.
Probate court may appoint, sec. 707. 244
What number may act, sec. 535....... 201

ARBOR DAY.
Designaied, sec. 2040................. 1228

ARBORICULTURE.
See Tree Planting and Arboriculture.

ARRAIGNMENT on Criminal Charge.
Defendant allowed one day after to plead, sec. 204...................... 441

PAGE.

ARRAIGNMENT.
Defendant to declare true name, sec. 201.. 441
If not in custody, sec. 195.............. 440
Must have counsel previous to, sec. 196.. 440
Manner of, sec. 198........................ 441
Of defendant in custody, sec. 193..... 440
Of defendant in probate and justice's court, sec. 479............................ 494
Of defendant on bail, sec. 194.......... 440
Refusal to plead, sec. 199... 441
Waiver of, sec. 198 441
When must be present in person, sec. 200 441

ARREST in Civil Action.
Affidavit and undertaking for, sec. 747.......... 254
Duty of officer, sec. 749................ 255
Execution for, sec. 316.................. 144
In justice's court, secs. 746-753........ 254
Rights of person arrested, secs. 748-753......... 255
When allowed, sec. 746 254

ARREST AND BAIL in Civil Action, secs. 120-155 90
Action against sureties, sec. 132...... 92
Application for discharge, sec. 148... 95
Allowance of bail, sec. 138............ 94
Affidavits of sureties on bond for, sec. 124.. 91
Bail, how given, sec. 129................ 92
Bail, how exonerated, sec. 133... 93
Bond to be filed with clerk, sec. 124.. 91
Discharge of defendant, sec. 128...... 92
Disposition of money deposited, sec. 142.. 94
Discharge of debtor confined on execution, sec. 147............................ 95
Deposit of money in place of bail, sec. 139.. 94
Duty of sheriff in making arrest, sec. 127.. 92
Examination for discharge, sec 150. 95
Form of order, sec. 125.................. 91
Justification of sureties, sec. 137...... 93
Liability of sheriff as bail, sec. 143.... 94
Manner of surrender, sec. 131 92
Money deposited paid into court, sec. 140.. 94
Motion to vacate order or reduce bail, sec. 145 95
Notice of application, secs. 148, 149. 95
Notice of justification of sureties, sec. 135........... 93
Oath of prisoner upon discharge, sec. 151 95
Order and affidavit delivered to and executed by sheriff, sec. 126... 91
Order for arrest, sec. 122............. . 91
Proceedings against sheriff in such case, sec. 144.............................. 94
Qualification of sureties, sec. 136..... 93
Return of order and objection to bail, sec. 134. 93
Substitution of bail for deposit, sec. 141.. 94
Sureties may surrender defendant, sec. 130.............. 92
When allowed, secs. 120, 121 90
When made and security for, sec. 123 91
When order vacated in bail reduced, sec. 146.......... 95
When persons may be arrested, secs. 120, 121.. 90
Allowed for contempt, sec. 586, 587.. 211
Effect of discharge of prisoner. sec. 154 96
Of usurper of office or franchise, sec. 412 171
Order for discharge, sec 152..... 96
Plaintiff may discharge prisoner, sec. 155.. 96
When prisoner may apply for discharge, sec. 153........................ 96

PAGE.

ARREST and Examination.
Adjournment of trial on examination, sec. 86 420
Bail endorsed on commitment, sec. 98 422
Continuance of case, sec. 95 422
Defendant's witnesses excluded, when, sec. 109 424
Defendant, when to be committed, sec. 96 422
Same, when to be discharged, sec. 97 422
Defendant failing to give bail, recommitted, sec. 88 421
Duty of magistrate taking recognizance, sec. 105 423
Duty of officers, if magistrate refuse bail, sec. 83 420
Same, if offense be punishable with death, sec. 84 420
Effect of omission to enter default, of recognizance, sec. 108 424
Endorsements and orders of court, when defendant held to answer, secs. 114, 115 425
Evidence to be received, sec 91.... 421
Magistrate may associated the magistrates. sec. 104 423
Magistrate taking bail, to certify on warrant, sec. 82 420
Names of witnesses to be given to magistrate, sec. 79 419
Officer to command aid, sec. 78 419
Officer taking prisoner before magistrate, sec. 80 419
Of forfeiture of recognizance, sec. 87, p. 421, sec. 106 424
On application for bail, sec. 103 423
Person knowing of offence, to complain, sec. 75 418
Person arrested brought before magistrate, sec. 85 420
Recognizance during adjournment, sec. 86 420
Recognizance of married woman or minor, sec. 101 423
Statement of defendant, sec. 93 422
Sureties may surrender principal, sec. 107 424
Warrant issued in same, sec. 77 419
Weight given to statement, sec. 94 422
What complaint to contain, sec. 76 419
When counsel for defendant appointed, sec. 90 44
When testimony taken in writing, sec. 92 422
When witness imprisoned, sec. 102 423
Witness examined in presence of defendant, sec. 92 422
Witness to give recognizance, secs 99, 100 422
As to defect in form of recognizance, sec. 108 424
Duty of magistrate holding defendant to answer, sec 110 424
Order of magistrate: if defendant discharged, sec. 116 425
Preliminary examinatien may be waived, sec. 111 424
When bail may be taken, sec. 112 425
Witnesses may be excluded from court, sec. 113 425

ARREST in Criminal Case.
Attorneys privileged from arrest, when, sec. 109 621
By private person, secs. 67-69 418
Charge to be specified, sec. 76 419
Defined, sec. 63 417
Duty of person required to aid officer, sec 73 418
For breach of the peace, secs. 14, 15. 406
How made, sec. 64 417
How made in such case, sec. 266 453
In other cases, sec. 85 420
In presence of magistrate, sec. 70 418
Manner of making, sec. 71 418
Of person threatening offence, secs. 22, 23 407

PAGE.

ARREST in Criminal Cases.
Of offenders, secs. 63-115 117
Officer to show authority, sec. 65 417
Same, without warrant, when to make, secs. 66-69 417
Of defendant on bail, sec 264 452
Officer refusing to make, sec. 128 534
Of persons intending to fight, sec. 153 541
Order of recommitment of defendant, sec. 256 453
Persons refusing to aid in making, sec. 175 549
Power of officer in case of flight or forcible resistance, sec. 72 418
Pursuit of, in case of escape or rescue, sec. 74 418
Unlawful, how punished, secs. 53-67 570
Upon what made, secs. 21. 22 407
When for capital offense, proceedings, sec 84 420

See Arrest and Bail.
See Arrest and Examination.

Of territorial auditor for refusal to settle, sec. 124 626
Warrant for, by probate judge or justice, sec. 477 .... 5 494
Warrant for, how issued, sec. 158 433
When officer may break open house, sec. 452 487

ARREST of Judgment
Court on own motion, sec 358 469
Effect of allowing, sec. 359 469
Motion, for what cause granted, sec. 357 469
Recommitted after, sec. 360 469

ARSENAL, Arms and Ammunition
Keeper of arsenal to report, sec. 89 616
Duty of keeper, sec. 90 617
Bond and official oath, sec. 91 617
Governor to collect arms, salary of keeper, sec. 92 617
Bond of party who receives arms, sec 93 617
Appropriation, sec. 94 617
Governor to take charge of arms and military stores, sec. 95 617
Governor authorized to sell arms, etc., sec. 96 618
Certain law repealed, sec. 97 618
Governor to give bond for arms, etc., sec 97 618
Secretary to countersign bond, sec 99 618
Public faith pledged, sec 100 618
Record of bonds to be kept, sec. 101. 618

ARSON.
Burning crops, bridges, etc., sec. 71 514
Burning with intent to defraud insurer, sec. 72 514
First degree, defined and punished, sec. 68 514
Second degree defined and punished, sec. 69 514
Third degree defined and punished, sec. 70 514

ARTIST. See Licenses.

ASSAILANT.
Lawfully killed, when, sec. 34 507

ASSAULT.
Defined and punished, sec. 58 511
Limitation of action for, sec. 45 69
On officer of prison, sec. 229 566
On officer serving process, sec 120 532
With deadly weapon, sec. 60 512
With intent to commit crime, sec. 59 511
Under color of authority, sec. 120 532

PAGE.

ASSAULT and Battery.
By intimidating with deadly weapon, sec. 62 512
Defined and punished, sec. 61 512
Limitation of action for, sec. 45 69
On officer, sec. 120 532
Under color of authority, sec. 120 532

ASSAYERS. See Licenses.

ASSEMBLY.
Unlawful, secs. 142-144 538

ASSESSMENT.
Equalization of ore mines, sec. 1795 1151
Measure of damages, sec. 609 220
Of damages in eminent domain, sec. 608 218
Poor tax, how assessed, sec. 1790 1149

ASSESSMENTS upon the Stock of Corporations.
Powers of trustees to levy assessments conferred, sec. 496 743
Limitation of assessment, sec. 497 744
Majority of trustees to levy assessment only, sec. 498 743
Amount of assessment and time of payment to be specified, sec. 499 744
Form of notice to be published, sec. 500 744
How notice published, sec. 501 744
Proceeding if assessment is not paid, sec. 502 745
What notice of delinquent assessment must state, sec. 503 745
Publication of delinquent notice, sec. 504 745
Delinquent stock may be sold, sec. 505 745
Sale to be made at auction to highest bidder, sec. 506 746
Who deemed highest bidder, sec. 507. 746
Corporation selling may bid in delinquent stock at the sale, sec. 508 .. 746
The date at which stock becomes delinquent may be extended, sec. 509. 747
Failure to publish notice not to invalidate assessment, sec. 510 747
Irregularity not to invalidate sale, sec. 511 747
How corporations to avail themselves of the provisions of this chapter, sec. 512 747
Corporations heretofore organized may render their stock assessable, sec. 513 748

ASSESSOR.
Assess and collect special poor tax, sec. 907 884
Bond and oath of office, sec. 904 883
County superintendent may administer oaths to in school matters, sec. 1872 1178
County commissioners to furnish blanks, etc., sec. 766 847
Deputies, appointment, qualification and duties of, sec. 906 884
Duties and authority in assessing mines, etc., secs. 1794, 1795 1157
Duties and liability as to assessment and collection of poor tax and fees therefor, sec. 1790 1149
Same, additional bond for, sec. 1790 1149
Election and term of office, sec. 903 883
Enumerate acres of trees grown, sec. 2046 1229
Fees of, sec. 907 884
Ineligible to second term, sec. 905 884
Notice to employer, list of employees to be furnished, sec. 910 885
Penalty for bribery of, secs. 112, 113 . 529
Penalty for receiving illegal fees, sec. 134 536
Stealing or falsifying records, sec. 114 530
To collect statistics, and may administer oaths therefor, sec. 1973 1208

PAGE.

ASSESSOR.
Vacancy, how filled, sec. 904 883
When official term to begin, sec. 1040 933
Fees of for same, sec. 1975 1209
Penalty for failure, sec. 1976 1210
To return same to auditor, sec. 1974.. 1209

ASSIGNEE.
Actions by, sec. 5 61

ASSIGNMENT.
Of promissory notes or bills, sec. 5. . 61
Of thing in action not to prejudice set off, sec. 5 61

ASSIGNORS.
See Bills of Exchange, Promissory Notes.

ASSOCIATES.
Lien of judgment against, sec. 25 64
Summons against under common name, sec. 25 64

See Joint Debtor.

ASSOCIATIONS—Benevolent.
See Corporations.

ATTACHMENTS—Secs. 181-205 103
Affidavit in, what must show, sec. 181 103
Balance returned to defendant, sec. 195 108
Court may order sale before judgment and disposition of proceeds, sec. 541 202
Description and record of property attached, sec. 187 106
Deficiency, how collected, secs. 195-196 108
Discharge of, sec 197 108
Discharge on motion, secs. 200-202 109
Examination of garnishee and defendant, sec. 190 107
From probate court, sec. 710 244
Garnishment, sec 188 106
Inventory and return of property, sec. 191 107
In case debt not due, sec. 183 104
In justice's courts, secs. 754-757 256
Judgment for plaintiff, how satisfied, sec. 194 108
Liability of garnishee, sec. 189 106
Motion; how opposed, sec. 201 109
Motion to discharge, sec 200 109
On non-judicial days, when may issue, sec. 531 199
Property claimed by third party, sec. 193 107
Property liable to, sec. 185 105
Perishable property, sale and proceeds of, sec. 192 107
Property liable to execution, sec. 319. 144
Prosecution of undertaking, sec. 196. 108
Range stock; how attached, etc., secs. 223-228 113
Release of property, sec. 198 108
Return of writ, sec. 203 109
Undertaking for release, sec. 199 109
Undertaking, on requisites of, sec. 182 104
Undertaking on appeal, effect of and appeal must be perfected, sec. 428.. 176
Writ; how executed, sec. 186 105
When lien accrues, sec. 204 109
When may be issued, secs. 181-183 103
When order in regard to may be appealed, sec. 421 174
Writ; requisites of, sec. 184 105

See Wage Workers.

ATTACHMENT in Probate Court.
For executor or administrator failing to account, secs. 260-262 339
Of witnesses in probate and justice's court, sec. 505 496

PAGE.

ATTACHMENT Book.
County clerk to keep, sec, 842 868
Recorder to keep, and form of, sec. 205 110

ATTACHMENT of Boats.
Complaint and warrant, secs. 212-213 112
Claims which are liens. sec. 207 111
Description of boat, sec. 213 112
Discharge of boat, sec. 217 112
Defence of suit, sec. 216 112
Execution against boat sec. 218 113
Execution; how satisfied, sec. 219 113
For what attached, sec. 206 111
Limitation of actions, sec, 209 111
Name of boat, sec. 222 113
Priority of liens, sec. 208 111
Raft, liability of, sec. 211 111
Summons; how issued and served, sec. 214 112
Sale of fractional interest, sec. 220 113
Sufficiency of complaint and affidavit, sec. 221 113
When lien attaches, sec. 210 111
Who may serve summons, sec. 215 112

ATTEMPT.
To bribe officer, sec. 113 530
To commit offence, sec 285 584
To commit felony, sec. 285 584
To commit misdemeanor, sec. 285 584
To escape, or aiding, sec. 126 533
To influence juror, sec. 130 535
To kidnap, sec. 53 510

ATTORNEY.
Compensation of, sec 494 192
Compensation in criminal case, sec. 197 441
Contest of probate of will by, sec. 17 279
In justice's courts, sec. 737 251
In probate court, appointment and fees of, sec. 328 355
Judge not to act as, secs. 548-550 203
May demand possession in claim and delivery, sec. 158 93
May make oath on continuance when. sec. 721 247
May verify pleadings, when, sec. 96. 84
Name to be placed in the summons, sec. 68 74
Not to be examined as witness, when, sec. 650 230
Penalty for bribery of, secs. 112. 113 . 529
Rights of, after making appearance, sec. 491 190
Service of papers upon, secs. 487, 488 189
To have notice if bail justifies, when, sec. 135 93
When may acknowledge satisfaction of judgment, sec. 311 140
What papers served upon, instead of party, sec. 492 191

ATTORNEYS.
Admission on his license from other states, sec. 110 622
Certificate necessary to procure license, secs. 103, 104 620
Examining committee appointed by supreme court, sec. 104 620
License of, secs. 102-110 619
Misbehavior in office, secs 106-108 620
Not to practice unless name on roll, sec. 106 620
Privileged from arrest, when, sec. 109 621
Proceedings when charged with offences, sec. 108 621
Roll of, kept by clerk of superior court, sec. 105 620
District—See District Attorneys.
Lien of, on moneys and judgment, sec, 116 623
Of other states, etc., special admission of, sec. 113, ... 622

PAGE.

ATTORNEYS.
Penalty for acting as, without license, sec. 111, ... 622
Prohibited from becoming security, sec. 115 623
Parties may act as, in their own cases, sec. 112. 622
Right to consult client in jail, sec. 114 623
To file notice of lien for fees, sec 116 623

ATTORNMENT.
By tenant to stranger, void, sec. 283 665
Not necessary to pass rents or remainders, sec. 282 665

AUCTION.
What deemed contract for sales at, sec. 225 653

AUCTIONEER.
See Licenses.

AUDITOR, County,
See County Clerk.

AUDITOR.
Receipt for legatee, to be filed with, sec, 308 351
To issue warrant for reward, sec. 284. 584
Warrant issued by to legatee, sec. 311 351

AUDITOR—Territorial.
Administer oaths and compel attendance of witnesses, sec. 136 629
Appointment and term of, sec. 1596 1082
Bond of, sec. 137 629
Charge of records and property, sec. 122 626
Duties of, secs. 117-127 625
Estimate and report; revenue, sec. 1128 961
Forging signature of, penalty for, sec. 276 582
Furnish forms for railroad report, sec. 738 837
Governor to examine books of, and report, sec. 142 630
Inspect treasurer's books, sec. 135 629
Issue warrants for fees and expenses of transporting prisoners, sec. 1077. 945
Licenses and receipts to county collectors, sec. 119 625
Office open to governor and legislature, sec. 125 627
Official oath of, sec. 1067, p. 939, sec. 1592 1081
Penalty for refusal to settle, sec. 124 626
Power to issue warrants, sec. 1122 960
Same; in what sums issued, sec 1124. 960
Quarterly report of expenses, sec. 127 628
Reports of, sec. 124 626
Salary, sec. 128 628
To audit and settle claims, sec. 121 625
To furnish information, etc., sec. 123 626
To issue and sell warrants for expenses of convicts, sec. 298 669
To keep office at capital, sec. 126 628
To prosecnte delinquents. secs. 120-125 625
Warrants; directions for issuing, sec. 117 625
When forbidden to issue warrants, sec. 1130 961
Warrants; record and report of, sec, 118 625
Duties‘ fees and penalties as to statistics, secs. 1170-1175, 1971-1976. 1208

See Printing.

Entitled to supreme court reports, sec. 1995 1215
Issue warrant for expenses of superintendent of public instrnction, sec. 1865 1175
Issue warrant to pay supreme court reporter, sec. 1993 1214

PAGE.

AUDITOR—Territorial.
- Not to deal in warrants and indebtedness, secs. 1579-1580........ 1079
- Official bond to be recorded, sec. sec. 1586........ 1080
- Penalty for illegal issue of warrants, see. 1131........ 961
- To be elected or appointed, and be ex-officio librarian, sec, 1588........ 1081
- To issue and sell warrants for expenses of indigent insane, see. 1225. 987
- To issue warrant for maintenance of insane, sec 1213........ 985
- To publish report, sec 2000........ 1216
- Vacancy in office; how filied, sec. 1590........ 1081

See Insurance Companies.
See Duplicate Bonds and Warrants

AUNT.
- Inheritance by, sec. 534........ 395

AUTHENTICATION.
- Of affidavit made out of territory, sec. 675........ 235

See Acknowledgments.

AWARD
- May be vacated, sec. 478........ 187
- May be made order of court, sec. 474. 187
- Modified or corrected, sec. 479........ 188
- To be in writing, entry and effect of, sec. 477........ 187

See Arbitration, Referee.

BADGE.
- Of society, penalty for unlawfully wearing, sec. 119........ 531

BAIL in Civil Action.
- Action against, sec. 132........ 92
- Allowance by court, sec. 138........ 94
- Arrest for contempt, sec 587........ 212
- Defendant may be surrendered, sec. 130........ 92
- Deposit of money in place of, sec. 139 94
- For discharge of defendant arrested, sec. 128........ 92
- Same, how given, sec. 129........ 92
- How exonerated, sec. 133........ 93
- In case of contempt of court, sec. 586 211
- Justification of, secs. 135-137........ 93
- Liability of sheriff as, sec 143........ 94
- Money deposited for, when to be returned, secs. 141, 142........ 94
- Manner of surrender of defendant, see. 131........ 92
- Plaintiff may object, sec. 134........ 93
- Proceedings to justify, sec. 137........ 93
- Qualification of, sec. 136........ 93
- Release in such case, sec. 588........ 212
- Substitution of for deposit, sec. 141. 94

See Arrest and Bail.

BAIL in Criminal Case.
- In another county, secs. 81-83........ 420
- In default of, sec. 88........ 421
- Proceedings on bond, sec. 87........ 421
- Upon arrest, sec. 23........ 407
- Action against, secs. 257, 258........ 451
- After commitment, sheriff may take, sec. 251........ 450
- Application for after commitment, sec. 103........ 423
- Arrest on order, sec. 266........ 453
- Admitted to new bail, when, sec. 268. 453
- Admission to defined, sec. 237........ 448
- Certified and recorded by clerk, sec. 249........ 450
- Continuance and issue of process, sec. 260........ 451
- Clerk may fix, when, sec. 160........ 434
- Collection of forfeited, sec. 259........ 451
- Deposit of money, sec. 250........ 450

PAGE

BAIL in Criminal Case.
- Defendant to be committed, sec. 267 453
- Deposit returned on surrender, sec. 263........ 452
- Endorsement on commitment, sec. 98........ 422
- Exonerated on discharge of defendant, sec. 320........ 463
- Endorsement on warrant, sec. 262........ 452
- Forfeiture of, sec. 256........ 451
- How put in, sec. 245........ 450
- Justification of, sec. 247........ 450
- May be endorsed on warrant, sec. 159 433
- New bail, sec. 255........ 451
- Notice to district attorney, sec. 241........ 449
- Of defendant held for warrant from another county, sec. 319........ 463
- Officer may take and approve, sec. 248........ 450
- On commitment, sec. 338........ 465
- Order fixing on indictment, sec. 261........ 452
- Order of recommitment, sec. 265........ 453
- Qualifications of, sec. 246........ 450
- Re-arrest of person bailed, sec. 264........ 452
- Surrender of principal, secs. 252-254........ 451
- Taking of defined, sec. 238........ 448
- Upon re-submission to grand jury, secs. 211-215........ 442
- When allowed, after conviction, sec. 242........ 449
- Same, before conviction, sec. 243........ 449
- Same, on appeal, sec. 244........ 449
- Who may admit to, sec. 240........ 449
- When defendant not admitted to, sec. 112........ 425
- When person charged may be admitted to. sec. 239........ 448
- Who taking bail in such case, sec. 269 453

BAILEE.
- Larceny by, sec. 93........ 522

BALLOT.
- See Elections.

BALLOT BOX.
- see Elections.

BAKERY AND CONFECTIONERY.
- See Licenses.

BANKER.
- Action for money deposited with, limitation of, sec. 46........ 69

See Limitations.

BANKERS AND BROKERS.
- See Licenses.

BANK NOTES.
- Assessed at cash value sec. 1009........ 523
- Forgery of, punished, sec. 96........ 523
- Having counterfeiting plates, sec. 103 526
- Having possession of forged. sec. 101 525
- Same, on fictitious bank, sec. 102........ 525
- Proof of counterfeiting of, sec. 105........ 526

BANKS AND BANKING.
- Incorporation of bank of discount and deposit, sec. 514........ 749
- Certificate, sec. 515........ 749
- Bank not to purchase its own stock, exception, sec. 516........ 750
- Powers, sec. 517........ 750
- Directors, number, qualifications, powers, sec. 518........ 750
- Transfer of stock, sec. 519........ 751
- May hold real estate, for what purpose. sec. 520........ 751
- May sell real estate, how, sec. 521........ 752
- Dividends and reports, sec. 522........ 752
- Liability of officers and stockholders, sec. 523........ 752
- Dividends only from net earnings, sec. 524........ 753
- List of shareholders, sec. 525........ 753
- Increase of capital stock, sec. 526........ 753

PAGE.

BANKS AND BANKING.
  Penalty for making false entries, etc., sec. 527 753
  Forfeiture of franchise, sec. 528 753
  Limit of liability to bank, sec. 529 754
  To keep twenty per cent of liabilities in available funds, sec. 530 754
  Taxation of banks, sec. 531 754

  See Savings Banks, Trust Deposits and Security Associations.

BARGAIN.
  See Contracts.
  See Conveyances.

BAR.
  To another indictment, sec. 313 462
  To counter clain, sec 91 82

BASTARD.
  Accused bound over and imprisoned for non-compliance, secs. 152-155 634
  Complaint against, arrest and trial of reputed father, sec. 150 633
  County commissioners may sue, sec. 151 634
  Concealment of birth of, penalty for, sec. 41 508
  Father of, to secure maintenance, sec. 155 635
  Inheritance by, sec. 536 397
  Proceedings in district court, secs. 152-155 634

BATTERY.
  See Assault and Battery.

BEAVERHEAD County.
  Act creating and prescribing boundaries of, sec 732 834

BENEVOLENCE.
  See Corporations.

BETTING.
  See Gambling

BIDDER.
  At public sale under execution, liability of, sec. 335 150

BIGAMY.
  Cause for divorce, sec. 999 919
  Defined and punished, sec 155 543
  Evidence in, sec. 155 543

BILL.
  How sued in justice's court, sec. 740 252
  Interest on, secs. 1237-1238 987
  Of discovery, not allowed, sec. 668 234

BILL of Exceptions in Criminal Case.
  Settlement and filing of, secs. 349-351 467

BILLS of Exchange and Promissory Notes
  Actions by assignee on, sec 5 61
  Effect of payment of principal or interest on, sec 54 70
  Of set off and defences when assigned before due, sec. 5 61
  Presumption, when protested, sec. 637 226
  Who may be included in action, sec. 20 63
  See Contracts, Promisory Notes.

  Checks and sight drafts without grace, sec. 157 636
  Costs of several actions on one, sec 496 192
  Days of grace, sec. 157 636
  Liability of drawers and endorsers, secs. 159-160 636
  Negotiable, sec. 156 636
  Notices of presentment, non-payment and protest, secs. 160-161 636

PAGE.

BILLS of exchange and Promissory Notes.
  Rate of interest upon, secs. 1237, 1238. 991
  Tender by and transfer to parties, sec. 162 637
  Transfer of to party tendering payment, sec. 162 637
  Who may be included in action, sec. 20 63
  Who may be sued, sec. 162 637

BILLIARD TABLE.
  See Licenses.

BISON.
  Informer one-fourth of fine, sec. 270 580
  Killing for ten years, sec. 270 580
  Primâ facie evidence of killing, sec. 270 580
  Special charge to grand jury, sec. 270 580

BLIND.
  See Deaf, Mute and Blind Children.

BOARD.
  Of county commissioners. See County Commissioners.
  Of health. See Board of Health.
  Neglect or refusal to perform duty, secs. 266, 267 579

BOARD of Health.
  County commissioners of each county to appoint a licensed physician to be member of a board of health, sec. 163 638
  The board of health to make rules and regulations for prevention of spread of contagious disease, sec. 164 638
  Duties of practicing physicians, sec. 165 638
  Board of health may declare quarantine and enforce the same, sec. 166. 638
  How expenses shall be paid, sec 167. 638

BOAT.
  Attachment of, secs. 206-222 151
  Burning of punished, secs. 68, 69-72 514
  Injury or cutting loose, sec. 218 561
  See Attachment of Boats.

BODILY INJURY.
  Assault with intent to commit, sec. 60 512

BOND.
  See Bail, Undertaking, Official Bond.
  Costs of several actions on one, sec. 496 192
  Effect of payment on as to limitation of action, sec 54 70
  For arrest of defendant in civil action, sec. 123 91
  For costs, when required, sec. 514 195
  How sheriff may recover on, sec. 533 200
  Officer not to give for costs, sec. 517 196
  Of sheriff, liability and proceedings on, to collect bail, sec. 144 94
  To indemnify sheriff for sale of property levied upon, sec. 330 145
  To release boat from attachment, sec. 217 112
  When suit dismissed for want of, sec. 515 196
  Approved by probate judge, sec. 80 293
  Attorney not to give for appearance of accused, sec. 115 623
  Action on, sec. 230 332
  Agent to give, when, sec. 307 351
  Each executor or administrator to give, sec. 78 293
  For school purposes. sec. 1949 1202
  Guardian to give before sale, sec. 387 370
  How sued in justice's court, sec. 740 252
  Interest on, secs. 1237, 1238 987
  Liability of agent on, sec. 310 351
  May require additional security, sec. 81 294
  Not affected by resignation, sec 106 298

PAGE.
BOND.
Of assessor, for poor tax collections, sec. 1790 1149
On appeal by prosecuting witness, sec. 28 408
Of contractor for public printing, sec. 1642 1096
Of executor and administrator, recorded, sec. 74 292
Of executor or administrator, secs. 75, 76 293
Same, condition of, sec. 77 293
Of executor, administrator or guardian, how payable, sec. 94 296
Of executor or administrator to fill vacancy. secs. 105-106 297
Of guardian, and conditions, sec. 358 363
Of guardian for non-resident minor, sec. 394 371
Of persons securing same, sec. 93 .. 617
Of special administrator, sec. 98 296
Of territorial auditor, sec. 137 629
Of territorial treasurer, sec. 138 629
Of keeper of military stores, sec. 91. 617
Orders for payment and suit on, sec. 288 346
Stealing, falsifying, etc., penalty for, sec. 114 530
Sureties on, to justify, sec. 80 293
Several recoveries had on same, sec. 79 293
When legatee to give, sec. 287 345
When new bond of guardian required, sec. 402 374

BONDS AND WARRANTS.
Authority to maintain action on, secs. 1137-1138 962
Bond to indemnify for same, sec. 1134 962
Certain officers not to buy, secs. 1579-1580 1079
Duplicate, secs. 1132-1138 962
Duties of auditor as to, secs. 1137-1138 962
Duty of officer issuing, sec. 791 855
Limitation as to amount and redemption of, secs. 788-790 854
"Original" and "duplicate" purport of requirements as to, secs. 1132-1136 961
Provisions for issue and payment of for county debts, sec. 781, p. 851, secs. 786-793 854
Territorial, when issued, sec. 1133 962

BOOKS.
Subpœna for production of, sec. 654 .. 231

BOUNDARY STAKE.
Penalty for removal of, sec 91 521

BOUNDARIES.
See Counties and County Boundaries

BOUNTY.
Amount of bounty to be paid, method of procedure, etc., sec. 1159 970
Record to be kept by county judge or justice of the peace, sec. 1160 972
Duty of the territorial auditor, sec. 1161 972
Penalty for forging certificate, sec. 1162 972
Penalty for attempt to defraud, sec. 1163 973

BOWLING ALLEY.
See License.

BRANDS AND MARKS.
Auxiliary office with county clerk, sec. 169 640
Branding at certain seasons prohibited, sec. 237 570
Branding other person's animals, sec. 235 569
Cattle and sheep driven must be branded, sec. 31 593
Fees of recorder, secs. 172, 173 640
Marking, altering, defacing, etc., sec. 86 519

PAGE.
BRANDS AND MARKS.
Penalty for using another's, sec. 174. 641
Recorded brands, how obtained, sec. 170 640
Record of, secs, 168-171 639
Report of recorder, sec. 172 640
Secretary of stock commissioners to be recorder, sec. 168 639
Venting of, sec. 175 641

See Trade Marks and Brands.

Butchers to record, secs. 189, 190 643
Distribution of copies and payment therefor, sec. 185 643
Expense of, sec. 187 643
No two to be recorded alike, sec. 188 643
Publication of, sec 184 642
Penalty for neglect, sec 191 644

BREACH OF THE PEACE.
Duty of officer when persisted in, sec. 14 406
Force to prevent in public meeting, sec. 18 406
Magistrates have power to prevent, sec. 20 407
Officer may prevent and arrest for, secs. 14, 15 406
When threatened in presence of officer or magistrate, sec. 15 406

See Peace.

BRIBERY.
Attempt to bribe, sec. 113 530
Defined and punished, secs. 111-113 . 529
Of juror or attempt to, sec. 130 535

BRIDGE.
Crossing too fast or with too many animals, sec. 232 568
Malicious injury to, sec 219 561
Not to obstruct ford, sec. 226 565
Penalty for burning, sec. 71 514

See License, Toll Road and Bridges.

BREWER.
See License.

BROKER.
When may be arrested, sec. 121 90

See Licenses.

BROTHER.
Inheritance by, secs. 534-552 395

BUFFALO.
Penalty for killing, sec. 270 580

BUGGERY.
Defined and punished, sec. 50 510

BUILDINGS.
See County Buildings..

BUILDING AND LOAN ASSOCIATIONS.
How capital stock paid in, sec. 629 .. 795
May own or lease real estate, sec. 630 795
Dues and fines, how collected, sec. 631 795
Surplus money may be loaned to members, sec. 632 795
Corporations heretofore organized may accept the provisions of this chapter, sec. 633, ... 795
Companies organized under the provisions of chapter XXV, may avail themselves, sec. 634 795
Certificate, what same shall contain, where recorded, sec. 635 796
Secretary of territory to issue license, sec. 636 797
Meeting of subscribers, number and term of trustees, sec. 637 797

PAGE.
BUILDING AND LOAN ASSOCIATIONS.
Vacancies, sec. 638 797
Officers shall be stockholders, sec. 639 798
Certificate after first meeting, sec. 640 798
Certificate by secretary of territory, sec. 641 798
When license deemed revoked, sec. 642 798
Corporate powers, sec. 643 798
Management by trustees, quorum, sec. 644 799
Officers, compensation, sec. 645 799
Bonds of treasurer and secretary, sec. 646 799
Shares of stock, subscriptions, transfer, etc., sec. 647 799
Upon what terms stockholders may withdraw, sec. 648 800
Meetings of trustees, loans offered, sec. 649 800
Loans confined to stockholders, sec. 650 800
Loans, how secured, sec 651 801
Payment of interest, etc., sec. 652 801
Payment prior to maturity, sec. 653 801
Trustees to hold until successors are elected, sec. 654 801
May purchase mortgaged property, sec, 655 801
Corporate life may be extended, sec. 656 801
Life of corporation under former law may be extended, sec. 657 802
Former corporations not affected, sec. 658 802
Corporations under former law may reform under this chapter, sec. 659 802
Effect of such reformation, sec. 660. 803
Not taxable for mortgages, sec. 661 803
Fees for recording mortgages, sec. 662 803
Dissolution, sec. 663 803
Proceedings to affect dissolution, sec. 664 803
Summons, sec. 665. 804
Answer, sec. 666. 804
Trial, sec. 667 804
Decree, where filed and recorded, sec. 668 804
Effect of dissolution, sec. 669. 804

BURDEN OF PROOF.
On accused, in homicide, sec. 40 508

BURGLARY.
Defined, secs 73-74 515
In the day-time, sec 74 515
In the night-time, sec 73 515
Jurisdiction of trial for, sec. 34 410
Killing of person attempting, when justified, sec 23 505
Penalty for, sec. 75 515
Tools used for, sec. 174. 549

BURNING
Property, offences defined and penalty for, secs, 68-72 514
When malicious mischief, secs. 216-222 560

BUSHEL
Standard of, defined, sec 2058 1232

BUSINESS
On what day judicial prohibited, sec 531 199

BUTCHER
See Licenses
Penalty for neglect, sec 191. 644
To preserve hides of animals killed sec. 236 570
To record brands and marks, sec. 190 643

BUTTER and Cheese.
See Oleomargarine
CALENDAR.
Causes to be placed upon, sec. 251 121

PAGE.
CANAL.
Right of way for, sec. 1241 994

CARDS.
Games of, prohibited on Sunday, sec. 157 544

CATTLE
See Animals.

CAUSES.
Placed on calendar, sec. 251 121
For new trial, sec. 296 135
For divorce, sec. 999 919
What may be united in action, sec, 86 80
See Actions, Civil.

CERTIFICATE.
Of service of summons, secs. 78-79 78
Of sale of personal property, sec. 338-339 150
Of sale of real setate, seec. 340 151
Of clerk to judgment on appeal, sec. 443 179
To copy of record, form, sec. 542 202
Of U. S. receiver, record of, sec. 542 202
Auditors of claims versus territory, sec. 121 625
Of incorporation, how executed, sec. 446 724
Same, where filed, etc., sec. 447 725

See Marriage, Acknowledgment.

CERTIFIED COPY.
See Evidence.

CERTIORARI
See Writ of Certiorari.

CHALLENGE.
To fight duel, sec 43. 509
To fight, punished, sec. 141 537
Of voter—see Elections.
Of juror in civil action, sec. 257 123
Grounds of, for cause, sec. 258 123
Same, how tried, sec. 259 124
Order of, sec. 260 124
Vacancy filled after, sec. 261 124
To Grand Jury.
Who nay interpose and when, sec. 118 427
To panel, causes for, sec 119 427
To individual, causes for, sec. 120 428
By defendant in custody, sec. 121 428
When deemed waived, secs. 121-122 428
To panel, effect of sustaining, sec. 123 428
Same, as to individual, sec. 124 428

See Grand Jury.
Of juror in criminal case.

Peremptory, how many allowed, secs. 278, 279 456
Same, who may interpose, secs. 278, 279 456
For cause, secs. 280-287 457
Trial of, secs. 288, 289 459
Corruption of officer as ground of, sec. 453 488
In probate court, sec. 490 495

CHAMBERS
Powers of district judge sitting in, sec. 704 243

CHANGE OF VENUE.
See Venue.

CHARACTER.
When person may be arrested for iniujury of, sec. 121 90

CHARGE.
To grand jury. See Grand Jury.
Of judge to jury in criminal action, secs. 326-327 464

PAGE.

CHARTER.
- Stealing, falsifying, etc., penatly for, sec. 114 530
- Not to authorize obstruction of ford, sec. 227 565

CHATTELS.
- Fraudulent conveyance of, penalty for, sec. 197 555
- Obtained for false pretences, sec. 198. 556
- See Personal Property.

CHEATS.
- Offences committed by, secs 197-211. 559

CHILD.
- Action for injury or death of, sec. 13. 62
- When not allowed to testify, sec. 649. 230
- Inheritance by, secs. 532-552 .. 395
- Bastard to inherit from mother, sec. 536 397
- May be legitimatized, sec. 536 397
- Advancement to, sec. 544-548 398
- Posthumous, inheritance by, sec. 552. 400
- Enticing or forcibly taking, sec. 56.. 511
- Abandoning, sec. 57 511
- Posthumous. when defeats estate, sec. 280 664

CHILDREN.
- Legitimacy of, in divorce, sec. 999.... 919
- Court may decree custody of in divorce, sec. 1004 920
- Furnishing firearms to, punished, sec. 195 554

CHOTEAU COUNTY.
- Act creating, and boundaries, sec. 738 837

CIRCUMSTANCES.
- Manifesting criminal intention, sec. 2 500
- Of killing, show malice, secs. 19, 20 .. 505
- Of mitigation in homicide, sec. 40... 508

CITATION.
- To administrator, sec. 90, p. 295, sec. 114, p. 300, sec. 257 338
- To recover estate embezzled or alienated, sec 130 303
- Of trustee of estate of decedent, sec. 132 305
- Of executor or administrator, secs. 255-262 338
- By whom and how issued and contents of, sec. 317 353
- When issued, secs. 318-320 353
- How served, secs. 319-321 353
- To person having property of estate, sec. 340 358

CITY.
- How summoned, sec. 72 76
- Cutting or injuring tree or timber in, sec. 363 159
- See Municipal Corporations.

CIVIL ACTION.
- See Action, Civil.

CIVIL PRACTICE ACT, secs 1-830 ..59-273

CIVIL RIGHTS.
- Suspended by imprisonment, when, sec. 279 583
- Restoration of, sec. 280 583

CLAIM AND DELIVERY.
- Of personal property, sec. 156 97
- Affidavit for, sec 157 97
- Duty of sheriff, secs 158, 159 97
- Exception to sureties, sec. 160 98
- Return of property, sec. 161 98
- Injury to property while detained, sec. 162 98

CLAIM AND DELIVERY.
- Sale of property seized or levied upon, sec. 163 98
- Discharge of undertaking, sec. 164... 99
- Return of property to defendant, sec. 165 99
- Justification of sureties, sec. 166 99
- Qualification of sureties, sec. 167 99
- Duty of sheriff if property concealed, sec 168 99
- How sheriff to keep property, sec. 169 99
- Claim by third person, sec. 170 100
- Filing and notice of affidavit, sec. 171 100
- By third party in attachment, sec. 193 107
- Of property of judgment debtor by third party, sec 356 157

CLAIM AND DELIVERY in Justice's Courts
- Action in justice's court, sec. 758-767. 256
- Affidavit in, sec. 759 256
- Order to take property, sec. 760 257
- Undertaking, sec. 761 257
- Return of property to defendant, sec. 762 257
- Power of officer if property concealed, sec. 763 258
- Delivery to party entitled, sec. 764 . 258
- Proceedings when claimed by third party, sec. 765 258
- Return of order and affidavit, sec. 766 258
- Qualification of sureties on undertaking, sec 767 258

CLAIMS AGAINST ESTATES.
- Limitation of, secs. 150-158 310
- How proved and allowed, secs. 151-154 311
- If rejected, how recovered, sec. 155... 313
- Not to be allowed when barred, sec. 156 313
- May be compounded, sec. 232 332
- Amount allowed to be endorsed, sec 160 313
- Statement of to be returned, sec. 169. 315
- Interest bearing, authority to pay, sec. 170 315
- Sale of property of decedent to pay, sec. 177 319
- Administrator or executor not to purchase, sec. 252 338
- Classification and payment of, sec. 273 341

CLAIMS AGAINST TERRITORY
- Auditor to settle, sec. 121 625

CLARK'S FORK.
- Appropriation for removing falls, sec. 1158 970

CLERGYMEN.
- Privileges of as witness, sec. 650 230

CLERK.
- When may be arrested, sec. 121 90
- Embezzlement by, sec. 92 522

CLERK OF BOAT.
- Contract by, sec 206 111

CLERK OF COURT in Civil Actions
- Authority to collect costs, sec. 520.. 197
- Duties as to monies deposited for bail, secs 140-141 94
- Duty as to adjournment of court in absence of judge, sec 531 199
- Duty as to judgment roll, sec 306.. 139
- Duty as to examination and taking bail, secs. 137-138 94
- Duty in drawing jury, sec. 255 122
- Duty on receiving verdict, sec. 270. 127
- Duty on return of execution, sec. 315 143
- Duty, when judgment affects real estate in another county, sec. 65 .
- Enter default of defendant, and judgment, when, sec. 245 11

PAGE.
CLERK OF COURT in Civil Actions.
Issue alias summons, sec. 69 75
Keeper of seal of court, sec. 528 199
May administer oaths, sec 693 241
May order publication of summons, sec. 73 77
May take affidavits, sec. 672 235
May take depositions, sec 693 241
Penalty for illegal fee bill, sec. 509 194
Receive deposit in court and pay same to treasurer, sec 236 117
Shares of unknown owners of proceeds of partition invested in name of, sec. 402 169
To deposit copy of summons in post office, sec. 74 77
To endorse filing on complaint, sec. 67 74
To enter award of arbitrators in judgment book, sec. 477 187
To enter consent of tenant in partition, sec, 403 170
To enter judgment, etc , on appeal, sec. 443 179
To file and enter notice of contribution, sec. 348 154
To file and register statement of arbitration, sec 474 187
To issue summons, sec. 68 74
To keep judgment docket and requisites of, secs 307-308 139
Same, open at all times, sec 309 140
To keep record of verdict, etc., sec. 278 129
To keep register of actions, sec 534 201
To make trial calendar, sec 251 121
To require undertaking in attachments, sec 182 104
To return writ of certiorari, sec 557 205
To write and file judgment of court, when, sec 280 130
To write down exceptions, when, sec. 291 133
When to transmit papers, sec. 64 73

In Criminal Actions.
To subpœna witnesses before grand jury, sec 136 430
To issue warrant for arrest, sec. 158 433
Duty on change of venue in criminal cause, sec. 231 446
Punishment for neglect, sec 235 447
Fee bill of, sec. 420 480
When costs taxed against, sec. 416 480
Duty and liability as to same, sec. 420 480
When to transmit copy of indictment and papers, sec 321 463
Duty as to verdict of jury, sec. 334 465
To enter judgment in minutes, sec. 371 472
Issue subpœnas in case of insane convict, sec. 381 473
To keep and certify account of juror's fees, sec 422 481
See Trial, Indictment
Penalty for bribery of, secs 112, 113 529
Stealing or falsifying records, penalty for, sec. 114 530
Penalty for receiving illegal fees, sec. 134 536
Bonds of, to be executed, sec. 192 644
Bonds of, suits upon, sec 193 645

See Deputies.

General Powers and Duties.
Having seal may take acknowledgments, sec. 238 606
Keep account of fines, etc , and certify same, secs. 975, 976 909
Penalty for failure, sec 976 909
Official oath of sec.. 977 910
To pay witness and jury fees to counties, sec. 1103 954
Same, other duties in regard to, sec. 1104 954

CLERK OF BOARD OF COUNTY COMMISSIONERS. 848
Duties in case of appeal, sec. 765 848
Record proceedings of board, sec. 770
Record resolution to raise money, sec. 770 848
To sign county warrants, sec. 770 848
Duty as to cancelling warrants, sec. 767 847
Preserve and file accounts, and other duties, see. 770 848
To endorse allowance on accounts, sec 771 848
To deliver certified copies of records, and papers, and fees for same sec. 771 848
Duty as to issuing and recording of orders, sec. 772 848
Certify new townships to secretary of territory, sec 773 848
Compensation of, sec. 774 849
Custodian of and responsible for books and papers, sec 973 909
To keep account with treasurer, sec 974 909
To settle for moneys payable to or from treasurer, sec. 974 909
To file accounts, etc., sec. 974 909
Copies certified by, evidence, sec. 974 909
Issue warrants and exhibit accounts, etc , to commissioners, sec. 974 909
To notify judges of election, sec. 1011 924
To mail election notices, sec. 1013 925
Duty as to certificates of election, and compensation of judges and clerks of election, sec. 1033 930
Make and transmit abstracts of votes, sec 1034 931
Penalty for failure to perform duties. sec. 1057 938
Official oath of, sec. .1067 939

CLERK OF DISTRICT COURT.
To transfer papers, etc., in change of venue, sec. 64 73
Duties as to judgment concerning lands in another county, etc., sec. 65 73
Duty of as to transcripts of judgments from probate court, sec. 710 244
Duties as to transcript from justice's court, sec 800 266
To issue executions for fines, sec. 389 474
Keep and certify time of jurors in criminal cases, sec. 422 481
To docket cause appealed from probate or justice's court, sec 513 497
Bond of, sec. 192 644
May appoint deputy, sec 194 645
Oath of deputy, sec. 195 645
To appoint deputies for each county and duties of, secs. 196, 197 645
Records and office at county seat, sec. 197 645
Penalty for failure or refusal, sec. 198 646
Penalty for failure to perform duties, sec. 927 889
Official oath of, sec. 1067 939
Records of notaries public deposited with, sec. 1566 1076
Keep records of notaries after office expired, and make copies of same and fees therefor, sec 1567 1076
Not to deal in warrants or indebtedness, secs. 1579, 1580 1079
Report to county superintendent of schools, and penalty for neglect, sec. 1903 1188

See Jurors

Suit upon bond of, sec. 193 645

CLERK OF ELECTIONS.
See Elections.

Page

[illegible]

Evidence of appointment of administrator or executor, sec. [illegible] 298
In transfer, must certified copy of record, sec. 110 298
Duties upon transfer of probate of will, sec. 110 298
Make certified copy of the order in re-transfer, sec. 112 299
Enter description of claim, sec. 154 312
Duties in arbitration of claim against decedents, secs. 164, 165 314
To post notices of settlements of estates, sec. 265 340
To issue citation, and when, secs. 317, 318 353
To record bonds and letters of guardianship, sec. 360 364
To record inventory and appraisement of estate of minor, sec. 372 367
To file and preserve guardian bond, sec. 404 374
Official oath of, sec. 1067 939

CLERK OF SCHOOL DISTRICT
Official oath of, sec. 1067 939
Issue certificate of election to trustees, sec 1880 1180
Duties of, secs. 1884-1887 1182
Take census of school children and report to county superintendent, and fees of, sec. 1886 1183

CLERK OF SUPREME COURT.
When shall adjourn court, sec 531 199
Keep roll of attorneys, sec 105 620
Official oath of, sec. 1067 939
Entry of judgment by, sec. 126 91

CLOUD
On title, who may unite in action to remove, sec 18 62

CODICIL
Effect of, sec. 448 382

COHABITATION.
When proof of marriage, sec. 155 543

COERCION
Of person to commit crime, secs. 6-7-10-11 501

COIN
Penalty for counterfeiting, sec 97 524
Same, having in possession, sec. 98 524

COLLATERALS
Inheritance by, secs. 539-542 398

COLLECTOR
Auditor to furnish blanks to, sec. 119 625
Not to buy warrants, secs. 1579-1580 1079
To render accounts to county commissioners, sec. 967 908
May be prosecuted if delinquent, sec. 968 908
County superintendent may administer oaths to, in school matters, sec. 1872 1178

COLLECTOR OF TAXES.
County treasurer to be, sec 995 881

Page

[illegible]

[illegible]

[illegible] 920

[illegible]
Penalty for keeping in town or village, sec. 165 516

COMMISSION.
To take deposition out of territory, sec 683 238
Merchants See License.
Issued by governor, secretary to sign, sec. 1967 1267

See Storage and Commission Fees

COMMISSIONER
Judgment on trial by, sec 280 130
Same, appeal from, sec. 280 130
Witnesses required to attend, sec. 655 232
To take depositions out of territory, sec. 683 238
Appointment and duties in partition, secs. 294-303 347
Of insane See Insane.

COMMISSIONERS OF DEEDS.
Affidavits taken before, sec 673 235
Appointment and term of, secs 199-200 646
Oath and seal filed, sec 200 646
May take acknowledgment, sec 238 656
Affidavit taken before, sec. 673 235

COMMISSION OR BOARD
Neglect of duty by, penalty for, secs. 266, 267 579
Guilty of fraud, oppression or extortion, sec 268 580
Jurisdiction of district court, sec. 269 580

COMMITMENT
Upon arrest for threatening offence, secs 24-25 408
In default of bail, sec 88 421
To answer complaint for offence, secs 96-98 422
Bail to be endorsed on, sec. 98 422
In criminal action, executed by sheriff, sec 454 488
For fine and costs in probate or justice's court, sec. 508 496
Copy delivered to jailer and authority of, sec. 524 498

COMMON LAW.
Offenses at, how punished, sec. 278 583
Of England, adopted, sec. 201 647

COMMON NAME.
Associates sued by, sec. 25 64

COMMUNICATIONS.
What deemed privileged, sec. 650 230
Made to public officer, sec. 651 230

COMMUTATION.
Of sentence of death, secs 383-386 473

COMPANIES.
See Corporations, Licenses.

COMPENSATION,
See Fees and Salaries.

COMPLAINT.
In case of intervention, sec 24 64
To make new party, sec. 27 64

Page

COMPLAINT
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
What must contain, [illegible]
If amended, [illegible]
What deemed waiver of objection to, sec. 88 [illegible]
Verification of, sec. 99 [illegible]
How construed, sec. 100 85
Description of real property, sec. 102 86
In pleading judgment, sec. 103 86
Libel or slander, sec. 107 .. 86
Allegation of, when deemed admitted, sec. 109... . 87
Amended on good cause shown, sec. 116 .. .. -.... 88
Supplemental, sec. 111 87
Amendments of, sec. 115 88
Designation, if defendant's true name unknown, sec 118 89
Initial letter may be used, sec 118 .. 89
For injunction, secs 173, 174 ... 100
Copy served in such case, sec 174 .. 101
For attachment of boat, secs. 212, 213 112
Name of boat in attachment, sec. 222 113
Judgment cannot exceed demand of, when, sec. 241 . .. 118
For partition of real estate sec. 378 164
For usurping office, sec 412 171
In proceedings in eminent domain sec 604 . . 216
Stricken out for not testifying, when, sec 671. 235
In forcible entry and detainer, sec 718. 247
In justice's court, secs 768-771 . 259
To recover estate embezzled or alienated, sec. 130... . . . 303
By public administrator, sec. 340 358

See Answer, Demurrer, Pleading

COMPLAINT, Criminal
Prosecuted in name of territory. sec 2 403
Prosecutions in probate or justice's court, commenced by, sec 5 . 404
Of threatened public offence, sec 21 407
By person knowing of public offence, secs 75, 76 418
Same, what may state, sec 76 . .. 419
For public offences, who to make, and proceedings under, secs 76-116 419
Same, who shall draw, sec 89 . 421
Endorsement, if held to answer, secs. 114, 115 425
Of stolen and embezzled property, sec. 432 485
In prosecutions in probate and justice's court, secs 474-482 . 493
How named in, sec 475 . 493
How and by whom made, 476. 493

COMPROMISE.
Offer of, by defendant, sec. 471. . 186

COMPOUNDING or Concealing Crime, sec. 129 .. . 534

COMPULSION.
Crimes committed by, secs 6-11 501

CONCEALED WEAPONS
Penalty for carrying in city, etc., sec 66. 513
Punishment for, sec 66 . 513

CONCEALMENT.
Of crime, sec 13 502

Page

[illegible]
[illegible]
[illegible]

[illegible]

[illegible]

[illegible]
[illegible]

CONDITIONS PRECEDENT, [illegible] . [illegible]

CONDITION SUBSEQUENT, sec. [illegible] [illegible]

CONFESSION
Of judgment, secs. 165-167 . 184

CONFINEMENT.
Unlawful, sec 67 513

CONSANGUINITY
Direct or lineal and collateral, secs. 539-542 398
Degree of, marriage void, sec 161.... 54

CONSIGNEE
Of boat, contract by, sec 206 111

CONSPIRACY.
Trial of, sec 296. 459
Proof necessary to convict of, sec. 296 459
Defined and punished, sec. 132 535

CONSTABLE
Limitation of action against, sec, 43. 69
May attach boat, sec 215.. . . . 112
To serve summons in justice's court, sec 744 253
Not to act as attorney in justice's court, sec 737 251
Attachment in justice's court directed to, sec 756 . .. 256
Duties of in such case, sec 756. .. . 256
Duties as to execution from justice, secs 802, 803 267
Complete execution of final process after term expires, sec 815.. . . . 271
May command the peace and arrest offender, secs 14-16 406
Penalty for refusal or neglect to perform duty in criminal actions, sec. 519 498
Penalty for bribery of, secs 112, 113. 529
Penalty for obstructing, sec 120...... 532
Aiding or permitting prisoners to escape, penalty for, sec 127 . . . 534
Refusing to arrest or receive person charged with offence, penalty for. sec 128 534
Penalty for receiving illegal fees, sec. 134 536
Penalty for buying judgment, sec 135 536
Election and term of office, sec 928 889
Bond and oath of, sec 930 . . 890
To settle with county commissioners, sec, 967-977..... .. 908
Penalties for failure, etc , secs 969-972 908

CONSTRUCTION OF STATUTES.
Pleadings in civil actions, sec. 100 .. 85
Certain words defined, sec. 539 .. . 201
Of agreement or contract, sec 628 ... 224
Language of writing, sec 629 225
Duty of judge construing statute or writing, sec 630 225
As to intention of legislature, sec. 631 225
As to circumstances under which instrument made, sec. 632 225

See Contracts, Written Instruments.

Of wills, secs. 474-508 387

PAGE.
CONSTRUCTION OF STATUTES.
Of words in indictment, secs 168, 169 435
Of "persons" in criminal law, sec 215. 443
Of phrase, "intent to injure," sec. 217 443
Rules for, sec 202 647
Repealing acts, sec 203 648
What to be liberally construed, sec 204 648
When to take effect, sec. 205 649
Terms "heretofore" and "hereafter" defined, secs 206-208. 649
Number and gender defined, secs. 207-208 649
Effect of repeal, sec 209 649
What may be omitted in publishing acts, sec 210 649

CONTAGIOUS DISEASE.
Inoculating, sec. 223 562
See Board of Health.

CONTEMPT.
Making second application for order, secs 551-552 204
What shall be deemed, sec 584 210
Defined, secs. 584-586 210
For detaining real estate against order of court, sec 585 211
Warrant issued, when and how executed, sec. 586 211
Committed in presence of court, sec. 586. 211
Proceedings to punish, sec 586 211
Warrant of arrest for, sec 587 212
How person arrested discharged, sec. 588 212
Return of writ, sec. sec. 589 212
Hearing charge, sec. 590. 212
Judgment and fine, secs. 591-596 212
Imprisonment for, sec 592 213
In case offence indictable, sec 593 213
When defendant fails to appear, sec 594 213
Excuse for non-appearance, sec. 595. 213
Judgment final, sec. 596 213

See Courts.

Witnes, refusal or neglect of, secs 661-662 233
Justice may punish for, sec 816 271
Of posse-comitatus, report of, sec 19. 407
Of court, by grand juror, sec. 125 428
Of witness before grand jury, secs. 137-140. 430
Juror dissenting from verdict after entry, sec. 336 465
Witness disobeying subpœna, sec 425 482

CONTENTS.
Of writings, evidence of, sec 627. 224

See Written Instruments

CONTINGENT FUND.
County commissioners may set apart sec 782 852
Surplus paid on warrants, sec. 783 852

CONTINUANCE, Civil.
Of suit in case of death of party, sec. 22 63
In case of transfer of interest by party, sec. 22 63
Not granted plaintiff while boat in custody, sec 216 112
To obtain evidence, sec 253 121
When may be granted, sec 253. 121
Depositions in case of, sec 254 121
For distribution in partition, sec 399. 169
In unlawful entry and detainer, sec. 721 247
Affidavit for, sec 721. 247

CONTINUANCE, in Criminal Case.
Application for, sec. 270. 456

PAGE
CONTINUANCE, in Criminal Case.
Cause for which granted, sec. 271 456
Same, on part of territory, sec 272 456
Application for after plea, sec 273 456
Defendant to give notice of, when, sec. 270 456
Affidavit for, sec 270 456
Recognizance upon, sec. 502 496
Commitment during, sec 503 496
Witness to be notified of, sec. 520 498

CONTRACT
Trustee of express trust defined, sec. 6 61
Limitation of action, secs 41-46 68
Continued by new promise, when, sec 53 70
Effect of payment upon, sec. 54 70

See Limitations, Written Instruments.

Summons on, what to contain, sec. 68 74
Pleading, performance of, sec 104 86
When person may be arrested, sec 121 90
For supplies, etc., for boat, sec. 206 111
Construction of, sec 628 224
Of fraudulent, sec 197 555
When claim against decedent barred, sec. 150 310
Real estate held under authority of executor, etc, and proceedings to sell, secs. 213-216 328
For conveyance by decedent, how enforced, secs 236-246 334
Stealing, falsifying, etc, penalty for, sec 114 530
Respecting gold dust and bullion, construed, sec. 211 650
For sale of lands, when void, sec. 212 651
For sale of personalty, when void, sec. 224 652
Lawful age, what declared to be, sec 1204 981
For insane, secs 1209-1214 984
Interest upon, secs 1236-1238 987
For public printing, how awarded, sec. 1626 1091
For teaching school, month defined, sec 1898 1187
School officers, when not to be interested in, and penalty, sec. 1913 1191

See Conveyances and Contracts.
See Conveyances
See Liens
See Printing

CONTRIBUTION.
Between judgment debtors, sec 348 154
Notice of claim for, sec. 348. 154

See Joint Debtor

CONVEYANCE
Mortgage not deemed, sec 371 161
Not recorded, holder not party to suit, sec 379 164
Effect of decree of partition, sec. 391 167
Where ordered stay of execution, sec 426. 175
Acknowledgments of, sec 524 199

See Acknowledgments

Of real estate of decedent, secs 176-224 319
Same, contract for, by decedent, how enforced, secs, 236-246 334
Stealing or falsifying, penalty for, sec. 114 530
Fraudulent, punishment of parties to, sec. 197 555

CONVEYANCES AND CONTRACTS.
Made with intent to defraud, void, sec 212 651

Page.

CONVEYANCES AND CONTRACTS.
- When not deemed fraudulent, sec. 213 . . . 651
- Power of revocation by grantor in, void, sec 214 . . . 651
- Power of revocation to another than grantor, effect of, sec 215 . . . 651
- Power of revocation, from what time valid, sec 216 . . . 651
- All conveyances of land must be in writing, sec 217 . . . 651
- Wills and trusts by operation of law not affected by, secs 217, 218 . . . 651
- Contracts for sale or lease when void, sec 619 . . . 652
- Agent lawfully authorized may sign, sec 220 . . . 652
- Power of court to compel specific performance, sec 221 . . . 652
- Deeds and assignments in trust, when void, sec 222 . . . 652
- What unwritten agreements void, sec. 223 . . . 652
- When sales of goods void unless in writing, sec. 223 . . . 652
- What deemed contract of sale at auction, sec 225, . . . 653
- Goods and chattles sold or assigned and not delivered, evidence of fraud, sec 226 . . . 653
- Term “creditors” defined, sec 227 . . . 653
- Agent may subscribe, sec. 228 . . . 653
- Made with intent to delay or defraud creditors, void, sec. 229 . . . 653
- Same, also void against heirs, sec 230 . . . 653
- Fraudulent intent, question of fact, sec 231 . . . 653
- Fraud not to affect innocent purchaser, sec. 232 . . . 654
- Terms “lands,” “estate,” “interest in land,’ and “conveyance” defined, secs 233, 234. . . . 654
- Conversion of personal property, when arrest in civil action allowed for, sec 121 . . . 90

CONVEYANCE OF REALTY.
- See Conveyances and Contracts.

- Acknowledgment, certificate of, secs. 238-244 . . . 656
- Acknowledgment, certificate of, what must state, sec. 242 . . . 658
- Acknowledgment, form of, by grantor known to officer, sec. 243 . . . 658
- Same, form of, by grantor unknown to officer, sec 224 . . . 658
- Acknowledgment or proof and certificate, secs 237, 238 . . . 656
- Same, by whom taken, sec 238. . . . 656
- Acknowledgment, person making must be personally known to officer, or proved, sec 241 . . . 658
- Acknowledgment, proof, record or transcript not conclusive evidence, sec 265 . . . 662
- Attornment of tenant to stranger, when void, sec 283 . . . 665
- Conveyance valid between parties without record, sec. 258 . . . 661
- Conveyance heretofore made record of, sec 275 . . . 664
- Same, governed by laws then in force, sec 276 . . . 664
- Effectual without seal, sec 1963 . . . 1206
- Grants of rents, reversions, or remainders good without attornment, sec 282 . . . 665
- How and by whom made and acknowledged, sec 235 . . . 665
- Instrument recorded may be read in evidence, sec 263 . . . 662
- Instruments heretofore recorded, notice, sec 286 . . . 665
- Legality of, how contested, sec 266, . . . 662

CONVEYANCE OF REALTY
- Lineal and collateral warranty abolished, sec 284 . . . 665
- Mortgage, satisfaction and discharge of, how entered, secs 271, 272 . . . 663
- Same, certificate of, how made and recorded, sec. 273 . . . 663
- Same, paid, penalty for non-satisfaction, sec 274 . . . 663
- Non-resident wife need not join, sec. 287 . . . 666
- Not recorded, void against subsequent purchasers in good faith, sec. 260 . . . 661
- Notice to all persons from time of filing, sec. 259 . . . 661
- Of married women, secs 254, 255, 257 . . . 660
- Of school property, sec 1879 . . . 1180
- Person not in possession may convey, sec 268 . . . 663
- Posthumous child defeats estate, when, sec 280 . . . 664
- Same inherits estate in remainder, sec 281 . . . 664
- Power of attorney to be acknowledged and recorded, sec 261 . . . 662
- Same, revocation of, sec 262 . . . 662
- Proof of execution, secs. 245-247 . . . 659
- Proof of handwriting, secs 249, 250 . . . 659
- Real estate of wife, how conveyed, sec 276 . . . 656
- Record or transcript of, when may be read in evidence, sec 264 . . . 662
- Secretary of territory may take acknowledgments of, sec. 1965 . . . 1206
- Tenants in common, when grantees become, sec 277 . . . 664
- Term “conveyance” construed, sec 270 . . . 663
- Term “real estate” construed, sec 269. . . . 663
- Terms “liens” or “issue” in remainders, construed, sec 279 . . . 664
- Title afterwards acquired by person conveying in “fee simple, absolute,” without title, vests in grantee, sec 267 . . . 662
- What certificate of proof must state, sec 248 . . . 659
- When entitled to be recorded, sec. 253 . . . 660
- Witnesses must be personally known to officer, sec 246. . . . 659
- Witness, production of, secs. 251-252 . . . 660
- Words, “grant, bargain and sell,” construed, sec 285 . . . 665
- Words of inheritance unnecessary, sec 278 . . . 664

CONVICT.
- Limitations affecting, sec 46. . . 69
- Not to be witness. when, sec 649 . . . 230
- To answer as to conviction of felony sec. 660 . . . 233
- Cannot be administrator, sec 59 . . . 290
- Proceedings, if pregnant and sentenced to death, secs. 384-386 . . . 484
- Penalty for aiding escape of, secs 123, 124 . . . 533
- Deprived of civil rights, sec. 279, . . . 583
- Kept in penitentiary, sec 289. . . . 667
- Accounts for keeping, secs 290-298 . . . 667
- Governor may contract labor of, sec 299 . . . 670
- Clothing and money furnished to, sec. 301 . . . 670
- Maintenance of defined, sec. 302 . . . 671
- Deduction, of time of sentence for good behavior, sec. 308 . . . 672
- Forfeiture for bad behavior, sec 309 . . . 672
- Time of several sentences construed as one, sec 310 . . . 673
- Good time granted those now serving, sec 311 . . . 673
- Insane, secs, 312-314 . . . 673
- Fees of officers in case of, sec 314 . . . 674

CONVICTION
- When a bar, sec 225, p 444, sec 313 . . . 462

PAGE.
CO-PARCENERS
May unite in action, sec. 18 62
How may commence or defend suit, sec. 21. 63

CO-PARTNERS.
See Associates.
See Partners, Partnership.

COPY.
Of complaint and affidavit for injunction, sec. 174 101
Of record as evidence, sec. 542 202
Of judgment in certiorari, sec 563 206
Of complaint served with summons, sec. 74 77
Same in action for partition, sec. 380 164
Of order annexed to transcript on appeal, sec. 438 178
Written opinion of court below on appeal, sec. 438 178
Adverse party allowed to take of documents, sec. 503 204
Brief furnished to judges and parties in supreme court, sec. 442 179
Entry in such case, sec. 564 206
Of order of condemnation in eminent domain, sec 613 221
Records, documents, etc., of public officer, sec. 839 868
Records by secretary of territory, evidence, sec 1968 1207

CORONER.
Limitation of action against, sec 43 69
Penalty for refusal or neglect to perform duty in criminal action, sec 579 498
Penalty for bribery of, secs 112-115 529
Stealing or falsifying records, sec. 114 530
Aiding or permitting escape of prisoner, sec. 127 534
Refusing to arrest or receive person charged with offence, sec 128 534
Receiving illegal fees, sec 134 536
Election, bond and term of office, sec. 865 875
When to act as sheriff, sec 866 875
When to serve process, secs. 867-868 875
To hold inquest and summon jury, secs. 869-870 875
Oath of jury, sec. 870 876
May compel witness to appear, sec. 871 876
Oath of witness at inquest, sec 872 876
Reduce testimony to writing sec 873 876
Verdict of jury at inquest, sec 874 876
Inquest to be kept secret, when, sec 875 877
Arrest of person charged, sec 876 877
Issue and authority of warrant for person charged, secs 877-879 877
Return of inquest to district court, sec. 880 877
Disposition of body, and burial expenses, 781 878
When justice of peace may act as, sec 882 878
Surgeon may be summoned and fees of, sec. 883 878
Person acting as, powers of, sec 926 889
Acting as sheriff, powers of, sec 926 889
Failing to perform duties, penalty, sec. 927 889
Fees of, sec 1090 949

CORPORATION.
Apppointment of receiver, sec. 186 105
Authority to take property under will, sec. 437 381
Certificate to be acknowledged and recorded, sec. 672 805
Companies otherwise formed, how may organize under this act, sec 486 736
Copy of certificate, evidence, sec. 457 727
Dissolution of, sec. 488 740

PAGE
CORPORATION
Duties of, sec 481 735
Existence proven, on trial for forgery sec 104 526
Flume companies, certificate of organization, and rights of, sec 477 734
For ditch and water purposes, certificate of, sec. 473 733
Foreign, duties and rights of, secs 442-445 720
Same, penalty for failure to file certificate, sec. 444 721
Foreign, undertaking for costs, sec 514 195
Same, suit dismissed for lack of, sec 515 196
Former acts repealed, sec. 676 807
For representative body, sec 674 806
General powers of corporations, sec 482 736
Same, extent and restriction of, sec 483 736
Holding property of, or owing judgment debtors, secs 355-356 157
How organized, secs 671-672 805
How summoned, secs 72-73 76
How summoned in justice's court, sec. 744 253
Included in term "person," sec. 281 584
Increase or diminution of stock, secs. 468-469 730
Industrial and productive, how organized, and certificate of incorporation, sec 446 724
Same what to contain, how made and acknowledged, and where recorded and kept, secs 446-447 724
Injunction against, when and how granted, sec. 178 102
Insolvent, trustees declaring dividend liable for debts, sec 461 729
Liability of stockholders, sec 457 727
Limitation as to devises to, sec 473 386
Loans to stockholders prohibited, and liability for, sec 462 729
Not to issue paper money, sec 485 736
Officers liable for false reports sec 463 729
Penalty for injuring property of, sec 484 736
Place of business, how removed, sec 490 741
Places of business, secs 448, 449 725
Power of legislature concerning, sec 466 730
Powers and term of, sec 673 806
Powers of, secs 447, 448 725
Powers of trustees after dissolution of, sec 489 740
President and other officers, selection of, secs 452-454 726
Sale of mining property not to be made without vote of stockholders, secs 492-494 741
Same, security required of, sec 452 726
Previously organized, powers and duties of, sec. 675 807
Proceedure to obtain land and rights of way, sec 487 737
Proceedings if claiming property of judgment debtor, sec 356 157
Proof existence, in criminal action, sec. 298 460
Property of, how attached, sec 186 105
Property of, liable to execution, sec 319 144
Record of stock and stockholders, to be kept, sec. 471 731
Same open for inspection, sec 471 731
Same, transfers not recorded, validity of, sec 471 731
Same to what extent evidence, sec. 471 731
Same, penalty for neglect as to, sec 471 731
Religious, benevolent, and other societies may become incorporated, sec. 670 805

PAGE

CORPORATION.
- Report annual to be published, sec 460 — 728
- Rights of, sec 474 — 733
- Stock certificate of amount, when and how made and recorded, sec 459 — 728
- Stock held by executor, trustee, etc, liability for, sec 464 — 729
- Same, who may represent, sec 465 — 730
- Stock trustees may demand payment of subscription to, sec 455 — 727
- Stock, what deemed transfer of, sec. 455 — 727
- Telegraph companies, certificate and rights of, sec 479 — 734
- To furnish water to public, rates of, how fixed, sec 475 — 733
- To keep ditches etc in good condition and protect property, sec 476 — 734
- Tolls not collected without permit, sec 491 — 741
- Treasurer, when shall make statement of affairs and penalty for neglect, sec 472 — 732
- Trustees liable for excess of debts over capital stock, sec 470 — 731
- Trustees, number and election of, secs 450, 451 — 726
- Trustees, powers of, secs 453-454 — 727
- Same, may purchase stock, sec 458 — 728
- Tunnel companies, certificates of, formation and rights of, secs 478, 479 — 734
- Verifications of pleadings by, sec 96 — 84

See Licenses.

- Forbidden to collect toll on roads or bridges, sec. 1855, — 1171
- Contracts for same void, sec 1856 — 1171
- Penalty for destruction or non-surrender of toll road, sec 1858 — 1171
- Same, for obstructing or neglect to repair road or bridge, sec 1859 — 1171

See Assessments
See Banks and Banking
See Savings Banks
See Insurance Companies,
See Assessment Life Insurance Companies
see Building and Loan Associations
See Institutions of Learning
See Mortgage, sec. 1555 — 1073
See Corporations, Railroad.

CORPORATIONS, RAILROAD.
- Acts of congress as to acceptance of, sec 699. — 817
- Annual report, sec. 700 — 818
- Auditor to furnish forms, sec. 701 — 818
- Authority to construct, sec 680 — 809
- Capital stock may be increased, sec. 698 — 817
- Capital stock, rules in regard to, sec. 681 — 810
- Same, sale of for unpaid installments, sec. 682 — 810
- Same, regulations for subscriptions to, sec 683 — 810
- Certificate of made and recorded, sec. 678. — 809
- Charter, how forfeited, sec 688 — 815
- Directors, election of, duties and oath and term, sec 683 — 810
- Lands, authority to acquire and how conveyed, sec 692 — 816
- Legislature may amend law and regulate, sec 699 — 817
- Liability for injuries to employees, sec 697 — 817
- Liable for damages, sec 686 — 814
- May change location or grade, sec. 690. — 816
- May construct telegraph, sec 695 — 817
- Money borrowed, regulations as to lien of, sec. 691 — 816

PAGE.
- Officers, how appointed, sec. 683 — 816
- Powers of, etc, secs 679, 680. — 809
- Principal office, establishment and removal, sec 694 — 816
- Private lands, purchase, holding of, etc, sec 685 — 812
- Same, proceedings to condemn, sec 685 — 812
- Public lands, roads, streets. etc, how obtained, sec 686 — 814
- Restrictions as to mineral and United States lands, sec 695 — 817
- Restrictions, penalties and rules regulating, sec 700 — 818
- Right of way and ground for stations, buildings, etc, sec 684 — 811
- Right of way through canons, defiles, etc, sec 687 — 814
- Road or stream may be diverted, not injured, sec 693 — 816
- Territory and municipalities not responsible for debts, sec 696 — 817
- Who may form, sec. 677 — 808

COSTS
- On change of venue, sec 64 — 73
- On amendment, secs 112-116 — 87
- Undertaking for in arrest and bail, secs 123, 124 — 91
- On judgment by default, sec 245 — 119
- When plaintiff not to recover in action for real estate, sec 367 — 160
- Judgment for upon dismissal, sec 244 — 119
- When defendant fails to disclaim, sec 367 — 166
- In suit for partition apportioned, secs 393, 396 — 168
- Undertaking on appeal to district court, sec 452 — 182
- On appeal from probate court, sec. 456 — 183
- In case of revocation of arbitration, sec 481 — 188
- Compensation of attorneys, secs 494 — 192
- Allowed to prevailing party, sec 494 — 192
- In what cases allowed to plaintiff of course, sec 495 — 192
- If several actions, allowed only in one, sec 496 — 192
- When allowed defendant of course, sec 497 — 193
- When in discretion of court, sec, 498 — 193
- To successful defendant, sec. 499 — 193

COSTS IN CIVIL ACTION
- Bond required for civil action, sec 514 — 195
- By or against administrator, trustee, etc, sec 505 — 194
- Certain officers not required to give, sec 517. — 196
- Fees of referees, sec 501 — 193
- Fees payable on demand, sec. 518 — 196
- In case of eminent domain, sec 615 — 221
- Included in judgment, sec. 513 — 195
- Memorandum delivered court under oath, and what to include, secs. 507, 508 — 194
- Same, penalty if items illegal, sec. 509 — 194
- Memorandum on appeal given to clerk, sec. 512 — 195
- Motion to re-tax, secs 509, 510 — 194
- Of continuance in unlawful entry and detainer, sec 721 — 247
- Of witness attendance, affidavit of, sec. 511 — 195
- On appeal from probate or justice's courts, sec 502 — 193
- On amendments in justice's court, sec 778 — 261
- On postponement of trial, sec. 503. — 193
- On review from inferior court, sec. 506 — 194
- Poor person may sue without, sec. 516 — 196

PAGE.

- COSTS IN CIVIL ACTION.
  - When discretionary on appeal, sec. 500 193
  - When suit dismissed for want of cost bond sec. 515 196
  - Where debt tendered, sec. 504 194
  - In justice's court, sec. 791 265
  - Allowed prevailing party in justice's court, sec. 828 273
  - Judgment for, sec 244 191
  - Officer to furnish itemized statement, sec. 521 197
  - Party appealing when to pay costs, sec. 825 273
  - Procedure of officer to collect costs, sec. 520 197
  - Security for, sec. 830 273
  - In probate court, how taxed, sec. 522 197
  - See Judgment.
  - Against person concealing property of estate, sec. 131 304
  - Court may order an appeal in probate matters, sec. 330 356
  - In hands of public administrator, how paid, sec. 348 360
  - In partial distribution, sec. 287 347
  - In proceedings to sell by guardian, sec. 385 369
  - In relation to homestead, sec. 145 309
  - Liability of executor, or administrator, sec. 166 315
  - On claims, sec. 160 313
  - On petition to revoke will, sec 35 283
  - When minor heir sues, secs. 562, 563 401
- COSTS in Criminal actions.
  - Clerk and sheriff to tax and deliver fee bill to attorney, secs 420, 421 480
  - Clerk to issue execution for, secs. 371, 389 472
  - Clerk to keep and certify juror's fees to county clerk, sec. 422 481
  - County commissioners may allow certain expenses, sec 418 480
  - See judgment
  - Defendant to be committed for non-payment, sec. 369 471
  - Defendant unable to pay, discharge of, sec. 391 475
  - Execution for, how enforced, sec 390 475
  - Generally, secs. 410-423 479
  - Jury may determine who shall pay, sec. 413 480
  - Lien of, on property of criminal, sec. 463 489
  - Of witnesses, sec. 417 480
  - On change of venue, by whom paid, sec. 232 446
  - On conviction, sec 415 480
  - Paid by county, secs. 410-413 479
  - Paid by prosecutor when, secs 411-413 479
  - Same, may appeal from judgment for, secs. 28, 29, 446
  - Witnesses, oath of, sec. 423 481
  - When complainant to pay, sec 27 408
  - When taxed against clerk, sec. 416 480
- COSTS, Criminal, in Probate and Justice's Courts,
  - Execution for, how issued and made, sec. 517 497
  - In appeal from such courts, sec 514 497
  - In criminal actions, paid to county treasurer, sec. 518 497
  - Judgment against defendant for, sec. 508 496
  - When county to pay, sec. 507 496
  - When prosecutors to pay, sec. 507 496
- COSTS in District Court.
  - Duty of county commissioners as to pay of officers, sec. 1109 955
  - Poor women, suing for divorce, not to pay when, sec. 1005 920

PAGE

- CO-TENANT. See Partition.
- COUNCIL, Legislative.
  - Oath of members, form of and how and when administered, sec. 1067 939
  - Trial of impeachments, secs. 41-62 412
- COUNSEL.
  - Assignment of, to defendant in criminal action, sec. 90 421
  - See Attorney.
- COUNSELORS. See Attorney.
- COUNTER CLAIMS
  - Compensated by cross demands, sec. 91 82
  - Not affected by death or assignment, sec. 91 82
  - When allowed in answer, secs. 89, 90 82
  - When barred, if not set up, sec. 90. 82
  - When judgment rendered on, sec. 302 138
  - See Cross Demands
- COUNTERFEITING.
  - Gold and silver coin, penalty for, sec. 97 524
  - Passing same, sec. 97 524
  - Gold, silver or bullion, sec 107 527
  - Same, possession of, sec 108 527
  - Having tools for, sec. 103 526
  - Of notes and bills, sec. 101 525
  - Passing or altering notes, bills and checks, sec. 102 525
  - Possession of counterfeit coin, sec. 98 525
  - Possession of or making dies and plates, sec. 103 526
  - Private stamps and labels, sec 99 525
  - Public or corporate seal, sec 106 526
  - Selling goods with false stamps, sec. 100 525
  - Witnesses in, sec 105 526
- COUNTIES.
  - Each organized a body politic, sec. 744 842
  - Expenses of courts in, sec. 1102 953
  - Judgments against, how collected, sec. 751 843
  - Powers of, secs 744-746 842
  - Powers of, by whom exercised, sec 746 842
  - Process against, when served, sec. 749 843
  - Property of, sec 745 842
  - Suits by and against, in what name, sec 748 842
  - To provide and maintain county buildings, sec. 747 842
  - Witnesses and jurors in suits affecting, sec. 750 843
- COUNTIES AND COUNTY BOUNARIES, secs. 730-740 833
- COUNTY.
  - Action against, where tried, sec. 58 72
  - Attached for judicial purposes, where action tried, sec 60 72
  - Costs in criminal actions, when to pay and requisitions of, secs. 410, 412, 414 479
  - Costs in such cases, how paid, sec. 517 196
  - Officers sue without bond, sec. 517 196
  - Place of trial, how and when changed, sec. 61 72
  - Summons against, sec 72 76
  - To be named in complaint. sec. 85 80
  - To be named in summons, sec. 68 74
  - To pay certain expenses for prisoners, when, sec 418 480
  - To pay expense of insane in criminal cases, sec 469 490
  - What causes tried in, sec. 57 71

PAGE

COUNTY ATTORNEY
When county attorneys to be elected, who eligible, sec. 843 869
To give bond, sec. 844 869
Duties of county attorneys, sec. 845 869
Compensation and salary, sec 846 870
Fees, sec 847 870
Construction, sec 848 871
Bond and oath of, sec. 912 886
Not to be county treasurer, sec 890 880
See Accounts and Settlements of County Officers, secs 967-977 908
Oath of deputy, sec 913 887
Penalty for failure to perform duties, sec. 927. 889
Where and when to keep office open, and records and papers open to public, and penalty for neglect, sec. 911 886

COUNTY BOUNDARIES
Beaverhead, sec 732 834
Choteau, sec 738 837
Custer, sec. 740 838
Dawson, sec 739 838
Deer Lodge, sec. 731 833
Fergus, sec 743 840
Gallatin, sec 737 836
Jefferson, sec 734 835
Lewis and Clarke, sec 735 835
Madison, sec 733 834
Meagher, sec. 736 836
Missoula, sec 730. 833
Park, sec 1 1238
Silver Bow, sec 741 838
Yellowstone, sec 742. 839

COUNTY BUILDINGS
How furnished and maintained, sec 747 842

COUNTY CLERK.
Annual financial statement to be made by, sec 778 350
Bond and oath of appointee, sec 1591 1081
Bond to be recorded, sec 1587 1080
Certified transcripts of records and papers to be evidence, sec 839 868
Deputy, appointment and duties of, sec 831 865
Distribute copies of marks and brands, and collect and report payments therefor, sec 185 643
Duties as to county warrants, and orders, and penalty for delivering same illegally, sec 841 868
Duties as auxiliary recorder of brands and marks, secs, 169-171. 640
Duties as to receiving and recording instruments, sec 836 867
Duty on application for record of brands and marks, sec 173 641
Election, term and bond of, sec. 829 865
Ex-officio recorder, sec 834 866
Extend and certify special school takes, sec 1906 1190
Fees payable in advance, sec 837 867
Index to each volume of records, sec 838 867
Keep general index, and form of, sec 835. 866
Keep office at county seat, and duties defined, sec 832 865
Keep record and index of town plats, sec 837 867
Keep recording book, sec. 836 867
May administer oaths, sec 693 241
May administer oaths and take acknowledgments, sec 840 868
Not to be county treasurer, sec 890 880
See Accounts and Settlements of County Officers, secs 967-977 908
Not to deal in warrants or indebtedness, secs 1579, 1580 1079
Not to issue warrant for balance on one paid for taxes, sec 284. 852

PAGE.

COUNTY CLERK.
Notify attorney and commissioners of suits commenced, sec. 749. 843
Official oath of, sec 1067 939
Penalty for non-performance, sec. 1975. 1209
Report to superintendent of schools and penalty for neglect, sec 1903 188
Sign county orders, sec. 763 846
To be clerk of county commissioners and auditor, sec 830 865
To distribute blanks to assessor for statistics, and take receipt, sec. 1974 1209
Fees for same, sec. 1975 1209
To enter name of grower of trees, etc, sec. 2047 1229
To keep attachment book, and form of and fees for same, sec 842 868
Vacancy in office, how filled, sec. 833 865
Vacancy in office, how filled, sec 1590 1081
When official term to begin, sec 1040 933
See County Finances

COUNTY COLLECTOR
See Treasurer

COUNTY COMMISSIONERS
Accounts, how made and allowed, sec, 762 846
Allow expenses of teachers' institutes, sec. 1962 1205
Appoint board of health, sec 163 638
Appointee, oath and bond of, sec 1591 1081
Appeals from, to district court, secs 764, 765 846
Board of, how constituted and selected, sec. 752 843
Bond to be recorded, sec. 1587 1080
Bond of, sec 776 849
Care of poor vested in, sec. 1609. 1086
Same to cause notice for proposals published, sec 1613 1087
Chairman, how chosen, sec. 760 845
Same, powers and duties of, secs 760, 761 845
Cannot be county treasurer, sec 890 880
Clerk of board, duties of, sec. 770 848

See Clerk of Board of Commissioners

Compensation of, sec 755. 844
Contingent fund may be set apart, sec 782 852
County orders, how executed, sec. 763 846
Duties as to formation of new school districts, sec. 1875 1178
Duties as to jails and prisoners, sec. 1269 1000
Duties as to levying and collecting poor tax, sec 1790 1149
Duties concerning changes of county seats, sec 978 910
Duties in case relief applied for, secs. 1619, 1620 1089
Duty as to expenses, etc, of supreme court, sec 1101 953
Duty as to payment of costs and fees, sec 1109 955
Duty as to payment of expenses of courts, sec. 1102 953
Duties as to medicines and attendance for poor, sec 1615. 1087
Duty of chairman in regard to insane, sec. 1215 985
Duty of clerk on appeal, sec 765 846
Duty in regard to county orders, sec. 767 847
Election and term of office, sec 753. 843
Examine county treasurer's books and moneys and certify and record result, sec. 141. 630
File and publish fiscal statements, secs 779, 780. 851
Fill vacancy in county assessor's office, sec. 904 883

PAGE.

COUNTY COMMISSIONERS.
- Fill vacancies in county offices, sec. 1589 1081
- Fill vacancy in county surveyor's office, sec. 902 883
- Fill vacancy in office of county superintendent, sec 1868 1176
- Collect penalty for failure of same, sec. 1871 1177
- Fill vacancy in treasurer's office, sec. 889 880
- Furnish blanks, books, etc , to county officers, sec 766 847
- How may borrow money, sec 756 844
- Make list of fees of same, sec. 2062 1233

See Bounty.

- May call in warrants and issue bonds, sec. 786 854
- May provide for payment of same. sec. 787 968
- May establish sinking fund, sec 781 851
- May fill vacancy in county treasurer's office, sec 1040 933
- May purchase and keep poor farm and work house, sec 1622 1090
- May reject bids for contracts for poor, sec 1625 1090
- May require prisoners to labor, secs. 1280, 1281 1002
- Not to acquire claim against county, sec 1110 955
- Not to deal in warrants or indebtedness, secs. 1579, 1580 1079
- Not to pay officer failing to perform duty, sec 927 889
- Oath and credentials of, sec. 754 844
- Of election to raise money, secs. 796, 797 856
- Penalty for failure to perform duties, sec 1057 938
- Penalty for failure to perform duties as to poor, sec. 1624 1090
- Penalty for neglect of duty, sec 768 847
- Proceedings to change county seats, secs. 978-980 910
- Powers and duties of, sec. 756 844
- Settlement with county officers, secs. 967-977 908
- Time of meetings and extra sessions, sec. 785 852
- To accept plats of town sites, sec. 2013 1220
- To allow costs in criminal actions, sec 410 479
- To allow pay of election officers, sec 1033 930
- To allow fees for collecting special school tax, sec. 1906 1190
- To appoint judges of election and establish election precincts, secs. 1011, 1012 924
- To appoint fire warden, sec 1139 968
- To appoint county inspector, sec. 2061 1233
- To audit and allow fees in insane cases, sec. 1221 982
- To bind minor, when, sec. 1617 1088
- To collect and settle accounts, enter suits, etc., sec 777 850
- To control all roads and bridges, of corporations, when, secs 1857-1859 1170
- To exercise corporate powers of county, sec. 746 842
- To examine as to delivery of warrants, etc , sec. 841 868
- To fix rates for water and ditch companies, sec. 475 733
- To fill vacancy in county clerk's office, sec 833 865
- To levy tax for stock inspection and detective fund, secs 42, 43 598
- Same, sec. 59 607
- To levy tax for sheep inspection and detective fund, sec 66 609
- To levy school tax, sec. 1902 1187
- To plat and record townships, sec. 769 848
- To post notices to prevent setting fire to timber or grass, sec. 222 562

PAGE

COUNTY COMMISSIONERS
- To provide standard weights and measures, sec. 2059 1233
- To select jurors, sec 1297 1007
- To use seal and sit with open doors, sec. 759 845
- Townships, how organized and changed, sec 757, 758 845
- Transfers of funds, sec 775 849
- Vacancies, how filled, sec. 1590 1081
- When governor may appoint. sec 1049 935
- When official term to begin, sec 1040 933

See County Finances.

COUNTY FINANCES, BONDS AND WARRANTS.
- County commissioners may bond indebtedness, sec. 786, 854
- May set apart revenue to pay bonds, sec 787 854
- Size of bonds, sec 788 854
- Duty of treasurer in taking up warrants, sec 787 854
- When bonds redeemable, sec 790 854
- County treasurer to enter county warrants presented for payment, sec 791 855
- Treasurers, when to pay over to territory, to take duplicate receipts, sec. 792 855
- County treasurer to post on door of office list of warrants, sec 793 855
- County warrants presented to treasurer for payment, rate of interest, sec 794 855
- On what conditions to borrow money, sec. 795 856
- Notice of loan to be posted, sec 796 856
- How and when vote on loan taken, sec. 797 856
- Bonds may be purchased before maturity, sec, 798 856
- Order in which to be purchased, sec. 799 857
- Transfer of county funds, sec 800 857
- Re-transfer of money to the sinking fund, sec. 801 857
- Duplicate bonds, warrants or coupons may be issued under certain circumstances, sec. 802 857
- Security bond required, sec 803 858
- How duplicate marked, sec 804 858
- Mark imparts notice, sec. 805 858
- Holder of original protected in his rights, sec. 806 858
- Duty of county commissioners to issue duplicate upon proof of loss of original, sec. 807 858
- County commissioners may issue bonds to redeem county indebtedness, sec 808 859
- How bonds and coupons signed, sec 809 859
- Notice of sale, sec 810 859
- How proceeds of sale applied, sec 811 859
- How redeemed bonds cancelled, sec. 812 860
- Faith of county pledged for the payment, sec 813 860
- Blank bonds to be lithographed, sec 814 861
- Notice when prepared to pay bonds, sec 815 861
- Moneys to be set aside to pay interest, sec 816 861
- Interest to be paid when due, sec. 817 862
- Penalty for forging, etc , the bonds, sec. 818 862

COUNTY FUNDS.
- See County Finances.
- See County Commissioners, Treasurer County

COUNTY JAIL
- See County Buildings.

PAGE.

COUNTY OFFICERS
See Officers.

COUNTY OFFICERS and Powers of Counties
See Counties See Officers

COUNTY ORDERS
See Warrants.

COUNTY RECORDER
See Recorder

COUNTY ROADS
See Roads and Highways

COUNTY SEAT
County offices to be kept at, sec. 911 886
Proceedings to change, secs 978-980 910
Same, election for and notice of, secs. 979, 980 911

COUNTY SUPERINTENDENT
See Superintendent of Schools

COUNTY SURVEYOR
See Surveyor

COUNTY TREASURER
See Treasurer.
See County Finances

COURTS, CIVIL
Affidavits, before whom taken, sec 672 235
Change of venue by, sec 62 72
Deposit in by trustee, etc, secs 235-237 117
Deposit to be paid into by sheriff, when, sec 140 94
Discretion as to collateral facts, sec 640 226
Facts noticed judicially, sec 643 228
Figures, how expressed, and abbreviations, sec 526 199
General powers of, sec 546 203
How verdict returned to, sec 270 127
In this territory, established, and jurisdiction, secs 696-715 242
Injunction granted and requsites as to, when, secs 172-180 100
Judgment on trial by, sec 280 130
Same, exceptions and appeal from, sec 280 130
Same, upon written statement of facts, sec 280 130
Leave of, for intervention, sec 24 64
May administer oaths, sec 693 241
May allow pleadings amended, sec 116. 88
May allow plea, etc, set aside, judgment or other proceedings, and grant relief, when, sec. 116 88
May appoint receiver, secs 229, 230 115
May compel arbitrators to make award, sec 474 187
May vacate or modify same, secs 478, 479 187
May determine controversies, sec, 25, 64
May direct jury as to verdict, sec 275 128
May direct sealed verdict returned, sec 269 127
May enforce obedience to judgment, sec. 316 144
May enter judgment by confession, when, sec 465 184
Same, in controversy submitted without action. secs 468, 469 185
May grant writ of certiorari, when, secs 555, 556 205
May imprison judgment debtor, when, sec. 351 256
May order jury to view property or place, sec 263 126
May order sick juror discharged, sec. 264 126
May order substitution of defendants, sec. 23 63

PAGE

COURTS, CIVIL
May punish party or witness for contempt, sec 357 157
May refer account, etc, sec 245 119
May require judgment debtor to answer as to property, secs. 350-353 155
May restrain from injury to real estate in foreclosure, sec 372 161
May summon interpreter, and fees of same, sec 653 231
Of actions in, for usurpation of office or franchise, secs 410-417 171
Of appeals from, sec 421 174
Of depositions to be used in, secs 678-685 236
Of record, defined, sec 543 203
Order for publication of summons, clerk may issue sec 73 77
Opening fixed for non-judicial day, adjourning, sec 531 199
Powers as to contempts, secs 584-596 210
Powers as to garnishee, sec. 190 107
Powers as to mandamus, secs 565-578 206
Powers as to property of, or debts due to same secs 353-356 156
Powers as to survey of land in litigation, sec 369 160
Powers in forclosing mortgages, sec 358 158
Powers in partition of real estate, secs 377-405 165
Powers of, on appeal, sec 441 179
Powers on non-judicial days, sec 531. 199
Seal of, and by whom kept, secs 527-529 199
Seal of, to be on summons, sec 68 74
Sittings to be public, sec 545 203
Same, exceptions, sec 546 203
To admonish jury, sec. 272 128
To appoint guardian for infant party to suit, sec 9 61
To be named in summons, sec 68 74
To disregard errors and defects in pleadings, when, sec 119 89
To instruct jury, sec 262 125
To remain open for purpose of cause in trial, sec 269 127
What may review on appeal, sec 440 179
When deemed to have acquired jurisdiction of parties, sec. 80 79
When may order arrest of defendant in civil action, sec 123 91
When may order attached property sold before execution, sec. 541 202
When may be held, secs 530, 531 199
When held, sec 532 200
Witnesses, powers as to production of, secs 654-671 231
Writ of prohibition, secs 579-583 209
Written proceedings in English language, sec 526 199

COURTS, CRIMINAL
Challenge of grand jury, sec. 122 428
Duties as to arraignment of prisoner, sec. 193 440
Same, as to discharge, etc, of prisoner on setting aside indictment, sec 210 442
Duties as to defendants alleging insanity, secs 392, 393 475
Duties as to pronouncing judgment, secs 361-367 471
Duties in charging jury, sec. 328 464
Duty of, if convict believed insane or pregnant, secs 380-386 473
Exceptions to decisions of, how made, sec 328 464
Judgment of conviction to be entered in the minutes, sec 371 472
Jurisdiction of, as to offences, secs, 32-36 409
May allow challenge after jury sworn, when, sec. 290 459
May endorse bail on warrant or direct clerk to enter on minutes, sec. 159 433

PAGE.

COURTS, CRIMINAL.
May grant change of venue, when, sec 226 445
May grant continuance, of course, sec. 276 456
May discharge defendant unable to pay fine, when, secs. 390, 391 475
May order jury to view place where crime committed, etc, sec. 322 464
May order sick juror discharged, sec 325 464
May order venire for new grand jury, sec 142 431
May order warrant for arrest of defendant, sec. 365 471
May permit defendant to withdraw and substitute plea, sec 221 444
May recommit defendant to answer new indictment, sec. 360 469
May reduce punishment assessed by jury, sec. 348 467
May require grand juror to testify, sec. 128 429
Person indicted for felony must be present when tried, sec 292 459
Personal presence of defendant, when required. sec. 363 471
Powers and duties as to admission to bail, secs. 237-269 418
Presentment of indictments by grand jury, sec. 152 432
Prosecutor adjudged to pay costs to be committed, sec. 369 471
Provisions for civil cases applied, when, sec. 294 459
To assess punishment, when, sec. 345 466
Same, at lowest limit, when, sec 346 466
Same, at highest limit, sec 347 467
To be open for cause to be submitted to jury, sec. 333 465
To charge and instruct jury, sec 305. 461
To charge grand jury, secs. 127-131. 429
To commit defendant to await warrant, sec 319 463
To discharge all or part of grand jury and order new venire, when, secs 123-125. 428
To enforce attendance, etc, of witnesses before grand jury, secs. 137, 138 430
To inquire into facts where judgment of death not executed, secs. 387, 388 474
To order defendant committed until fines and costs are paid, sec. 368 471
To order defendant produced, sec. 121 428
To order sheriff to remove prisoner in such case, sec 227. 445
Verdict of jury, how presented to, etc., sec 334 465
When issues may be submitted to, sec. 276 456
When may arrest judgment, secs 357, 358 469
When may discharge jury, sec 318. 463
When may deal with juror for contempt as to verdict, sec 336. 465
When may grant new trial, sec. 354. 468
When may prolong or suspend execution of criminal, sec 379 473
When to commit or recognize defendant as witness, sec 310. 462
When to discharge prisoner not brought to trial, sec. 304 460

COURT
See District Court, Justices Court, Supreme Court, Probate Court

CREDITS
When administrator may sell on, sec 200 326
Claimant must make oath to, when, sec. 151 311
Administrator allowed, sec 264 340
Obtained by false pretenses, sec. 198 556

CREDITOR.
When deemed a redemptioner, sec. 340 151

PAGE

CREDITOR
Letters of administration granted to, sec 55 289
Right to object to administrator's bond, sec. 64 291
Power to make administrator account, sec. 256 338
Apportionment to, by administrator, secs 273-280. 341
Notice to, by administrator, sec 147 310
Selling or removing property with intent to defraud, secs, 202, 203 557
Term defined, sec 227 653
Interest allowed to, sec 1237 987

CREDITS.
When and how attached, sec. 185 105
Attached, how collected, sec. 186 105

CREEKS.
See Irrigation and Water Rights.

CRIME.
Abetting and advising, sec. 254 575
Accessories to, secs. 12, 13 502
Act and intention, secs 1, 2 500
Administrator disqualified by, sec 59 290
Against habitation, etc., secs 68-74 514
Against persons, secs 18-67 504
Against property, secs 77-95 516
Against public justice, secs 109-139 528
Against public morality, etc, secs. 155-190 543
Against the peace, secs. 141-154 537
Assaulting warden, etc., and breaking jail, sec. 229 566
At common law, how punished. sec. 278 583
Bribery, or recovering bribe, secs. 131-134 535
Circulating bills, etc., as money, sec 224 565
Committed by cheats, swindlers, etc, secs 197-211. 555
Committed under coercion, secs. 10-11 501
Compounding misdemeanor, or felony, sec. 129 534
Conspiracy to indict for, sec 132 535
Division of into misdemeanors and felonies, secs 3, 4 404
Drunkenness no excuse for, sec 8 501
Doing business without license, sec 225 565
Empiricism, sec 231 567
Embracery, sec 130 535
Fast driving animals over bridge, sec 232 568
Firing guns, etc, in town, sec. 228 566
Forgery and counterfeiting, secs 96-108 523
General provisions regarding, secs 278-287 584
Interference with contractor or employee, etc, sec. 252. 557
Interfering with work or mining claim, sec 253 575
Jurisdiction of courts, sec 6 404
Malicious mischief, secs. 214-222 560
Married women, when guilty, secs 6-7 501
Misfortune or accident not deemed, sec. 9 501
Necessary ingredients, sec. 1 500
Non-performance of official duty, sec 266 579
Obstructing fords, etc., secs. 226, 227 565
Of attempts to commit, sec 285 584
Persons capable of committing, secs. 1-11. 500
Self defence, sec. 10 501
Selling liquor on election day, sec. 266 579
Violating law as to election for county seat, sec 230 566
Who incapable of, secs 3, 4, 6 500

PAGE
CRIMINAL
See Prisoner, Convict

CRIMINAL ACTION
See Action, Criminal

CRIMINAL PRACTICE ACT secs 1-530 403

CRIMINAL PROSECUTIONS
In name of territory, sec 161 435
Forms of, and rules of pleading, sec 162 435

CHRISTMAS
Judicial business prohibited, sec 531 199

CROSS DEMANDS.
How allowed in civil action, sec 91 82

CURRENCY
When unlawful, sec 231 565

CUSTER COUNTY
Act creating, and boundaries, sec 740 838

CUSTODIAN OF WILL
Duty of, sec. 8 277

CUSTOMS
Local or technical terms, in evidence, sec 633 225

DAM
See Dams and Reservoirs

DAMAGES
By unmarried female, for seduction, sec 11 61
For causing death of adult, sec 14 62
Assessment of, by jury, secs 276, 277 129
For injury to property unlawfully detained, sec 162 98
For causing death of infant, sec 13 62
For nuisance, sec 361 159
For waste, sec 362 159
For cutting or injuring timber, sec 363 159
Same, measure of, sec 364 159
When claimed for withholding real estate, sec 365 159
Set-off allowed against, when, sec 369 160
For injury to real property after purchase under execution, sec 273 161
For usurpation of office or franchise, sec. 415 172
When less than fifty dollars, no costs allowed, sec 498 193
In case of mandamus, sec 576 208
Assessment of, in eminent domain. sec 609 220
Payment of, in such cases, secs 611, 612 220
In forcible entry and detainer, sec. 726 248
In justice's court, recovery of, sec 746 254
For non-delivery of will to probate court, sec 8 277
For lands condemned for corporations, sec 487 737
For injuries to persons, causing death, secs. 981, 982 911
See Roads and Highways

DAMS AND RESERVOIRS
Not to be filled to endanger life or damage, sec 983 912
How must be constructed, sec 984 913
Proceedings to examine, secs 985, 986 913
Oath and report of examiners, 986-988 913
Proceedings to secure, sec 987 913

PAGE
DAMS AND RESERVOIRS
Trial and selection of jury, secs 988-989 914
Appeals from probate judge, and proceedings pending, sec 990 915
Penalty for resisting officer, sec 990. 915
Fees of jurors, sec 991 915
Liability and lien for expenses, sec 991 915
Proceedings to examine when being constructed, sec 992 916
Dangerous, liability and penalty for constructing and maintaining, sec 993 916

DANCE HOUSE
Unlawful to keep open, when, sec. 1406 1039

See Licenses

DAWSON COUNTY.
Act creating, etc , sec 739 838

DAYS
Judicial and non-judicial, secs 530, 531 199
Of grace, on bill of exchange or promissory note, sec 157 636

DAUGHTER.
Right of parent to sue for seduction of, sec 12 61

DEADLY WEAPON
Fighting duel with, secs 22, 23. 505
Assault with, how punished, secs 60, 62 512
Special charge to grand jury as to, sec 65 512
Drawing or exhibiting, sec 65 512
Carrying with intent, sec 174 549
Prevention of fight with, sec. 154 541

DEAF, Mute and Blind Children.
Education of, contract and payment for, secs 994, 995 917
Regulations as to payment and transfer, sec 995 917
This act to apply only to indigent, sec 996. 918
Instruction of the blind in trade, secs. 997, 998 918

DEATH
Of child, action for, sec 13 62
Not to impair right of possession, sec 38 67
Of party, not to abate action, sec 22 63
Same, how action continued, sec 22 63
Of defendant. exonerates bail, sec 133 91
Of party after judgment, sec 305 139
Execution may issue after, sec 317 144
Time of, in homicide, secs 22-30 505
Penalty, how inflicted, sec 25 505
Place of, in homicide, sec 31 506
By legal sentence, justified, sec 36 507
Of bastard concealed, sec 41 508

DEBT.
When defendant arrested for, sec 121 90
When attachment issued on, sec 181 103
Due defendant, attached and how, sec 186 105
For supplies furnished boats, secs 206-222 111
Action for, when secured by mortgage, sec 358 158
Proceeding when not all due, on foreclosure, sec 360 158
Effect of part payment on limitation of action, sec 54 70
Of estates, how paid, secs 273-283 341
Of another, effect of special promise to pay, sec 223

PAGE

DEBT.
Imprisonment for prohibited, sec 1203 .. 981

See Claims Against Estates

DEBTOR.
Garnishee, rights, duties and liability of, secs. 189-191 .. 106
May be examined touching his property, sec. 803 .. 267
Earnings and property of, exempt from execution, sec. 321 .. 145

DEBTS.
If attached, how collected, secs 189, 190 .. 106
Administrator to collect, sec 225 .. 331
Of deceased persons, administrator to pay, secs. 273-278 .. 341
Personal estate sold to pay, secs. 176-180 .. 319
Real estate sold to pay, secs. 181-224 .. 320
Classes of and order of payment, secs. 273-278 .. 341
Refunding legacies to pay, sec. 288 .. 346
Appeal from probate court allowing, secs. 324, 325 .. 354

DECLARATION
Affecting rights of parties, sec. 620 .. 223
Of member of family, as to pedigree, sec. 624 .. 223
Of decedent, against interests, sec. 625 .. 224
Of occupancy of public domain, sec 1658 .. 1102
Form of, sec 1661 .. 1103

See Evidence.

DECREE.
Rendered out of territory, limitation upon, sec. 55 .. 70
Of probate court, force and effect of, sec. 1 .. 274

DEED
~~Of~~ homestead, when void, sec. 323 .. 147
Who may take acknowledgments of, sec. 524 .. 199
By administrator, sec 240, p. 335, sec. 204 .. 327

See Conveyances, Real Estate.

DEER LODGE COUNTY.
Act creating and prescribing boundaries, sec. 731 .. 833

DEFACING.
Instruments, proclamation, advertisement, record, etc , sec 173 .. 548
Mark or brand of animal, sec. 86 .. 519

DEFAMATION.
Malicious, sec. 154 .. 541

EFAULT.
See Judgment by default

DEFECT IN PLEADINGS
When disregarded, sec. 119 .. 89

DEFENCES
Actions by assignee, without prejudice, sec. 5 .. 61
Married woman may defend in her own right, sec. 8 .. 61
Pleadings allowed in, sec 82 .. 79
Defendant may set forth, sec. 91 .. 82
To be separately stated, sec. 91 .. 82
Irrelevant matter stricken out, sec 101 .. 85
What allowed in actions for slander and libel, sec 107 .. 86
By joint debtor, not originally served, sec. 462 .. 184

PAGE.

DEFENCES.
Persons appointed for in probate court, sec 328 .. 355
What allowed in forcible entry and detainer, sec 723 .. 247
In eminent domain, sec. 606 .. 217

DEFENDANT.
Amendment of pleadings by, secs. 115, 116 .. 88
Answer of in partition, sec 383 .. 165
Arrest etc , of, for usurpation of office, secs. 411-413 .. 171
Attachment agsinst, if a debt not due, sec. 183 .. 104
Bail, how given, sec 129 .. 92
Bond to, in claim and delivery, sec 159 .. 97
How served in same, sec. 159 .. 97
Change of venue. by, sec. 61 .. 72
Defence to action for slander, sec. 107 .. 86
Defence of, in same, sec 723 .. 247
Discharge of, sec 128 .. 92
Disclaimer by, of interest in real estate, sec. 367 .. 160
Duties and rights as to return of property in same, secs. 161-166 .. 98
Effect of admission of service, sec 78 .. 78
Effect of discharge, sec 154 .. 96
Effect of failure to set up counter claim, sec 91 .. 82
Exception to sureties in injunction, sec. 176 .. 101
Execution against part of, sec 314 .. 143
How associates designated, sec 25 .. 64
How discharged from arrest, secs, 46-155 .. 95
How long kept in arrest, sec 127 .. 92
How summoned, secs 71-77 .. 75
If an infant, guardian appointed, sec 10 .. 61
In civil action, defined, sec. 2 .. 59
In eminent domain, who to be, sec 606 .. 217
Joinder of, where several are liable, secs 19, 20 .. 63
Joint debtor not originally served, how summoned, sec. 459 .. 183
Judgment affecting, how may be given, secs 239, 240 .. 118
Judgment against by confession, sec 465 .. 184
Judgment by default against, sec 245 .. 119
Judgment for, on counter claim, sec 302 .. 138
May apply to court to modify or dissolve injunction, sec 179 .. 102
May be discharged on depositing amount claimed, sec 23 .. 63
May be heard before injunction granted, sec 177 .. 102
May be surrendered by sureties, and how, sec 130- .. 92
May bring issue to trial, sec 252 .. 121
May deposit money, in place of bail, sec 139 .. 94
May object by answer when sec 88 , .. 81
May release property attached, secs 198, 199 .. 108
Name of entered in judgment docket, sec 308 .. 140
Notice or waiver of objection to sureties in same, sec 160 .. 98
Of personal judgment against, or foreclosure, sec 358 .. 158
Offer of, to compromise action, sec 471 .. 186
Order for arrest of, in civil action, secs 122-123 .. 91
Entitled to copy of papers in such case, sec 126 .. 91
Property of, liable to attachment secs. 184, 185 .. 105
Same, how attached, secs 185-191 .. 105
Property of, may be attached, sec 181 .. 103

PAGE
Rights, as to cross demands and counter claims, sec 91 82
Rights of continuance in forcible entry and detainer, sec 721 247
Rights of, if successful in attachment suit, secs 197-202 108
Rights of, in partition, sec 384 165
Served with copy of amendment, sec. 115 88
Summons, how issued or waived, secs 67, 68 74
To have surplus after debts, etc , satisfied sec 195 108
Vacation of order of arrest, and reduction of bail, sec 145 95
Voluntary appearance, effect of, sec 80 79
When action may be commenced, secs 56-63 71
When allowed to demur, sec 87 81
When designated by fictitious name, sec 118. 89
When joint, effect of service on one, sec 77 78
When may be arrested, sec 121 90
When may be enjoined, secs 173-175 100
When may dismiss action, sec 242 118
When one or more may defend for all, sec 21 63
When one substituted for another, secs 22, 23 63
When to answer complaint, sec 68 74
When to recover costs, secs 497-499 193
Where possession of real estate is in suit, sec 17 62
Who may be made, sec 16 62
Who required to be joined, sec 19 63

DEFENDANT in Justice's Court.
  How summoned, secs 741-745 252
  Time to appeal, sec, 743. 253
  Arrest etc , secs 746-750 254
  Plea of in same, sec 753 256
  Attachment of property of, secs 754-758 256
  Return of property to, secs 761, 762 257
  Signature, when admitted genuine, sec 775 260
  When may dismiss action, sec 785 263
  Judgment by default, secs. 786-792 263
  Same, against joint defendants, sec. 795 265
  Effect of offer to allow judgment entry, sec. 797 266
  Judgment to state if liable to arrest, sec. 798 266

DEFENDANT in Probate Court
  Defined, sec 326 354

DEFENDANT in Criminal Action
  Acquitted if reasonable doubt of guilt, sec. 308 462
  Admission to bail, secs 237-269 448
  Allowed time to prepare for trial, sec. 275 456
  Allowed one day to plead, sec 204 441
  Arraignment and pleadings of, secs 193-225 440
  Arrest and examination of, to prevent offence, secs 22-26 407
  Bail and discharge of, secs 80-83 419
  Bail to be endorsed on commitment, sec 98 422
  Challenge of jury, secs 278-291 451
  Change of venue, when granted, sec 226 445
  Committed on examination, sec. 96 422
  Committed till fine and costs paid, secs 368-369. 471
  Committed to await warrant, when, sec 319 463
  Continuance granted, when, secs 270-273 456
  Convicted of lowest degree of offence, when, sec 346 466
  Convicted on testimony of accomplice, when, sec. 317 463

PAGE.
DEFENDANT in Criminal Action
  Conviction or acquittal a bar, when, sec 313 462
  Costs of action, how paid or collected, secs. 410-423. 479
  Defendant recommitted or admitted to bail, if same granted, sec. 360.... 469
  Defined, sec. 2 403
  Demurrer to indictment, right to and requisites of, secs. 212, 213 443
  Same, effect of sustaining, secs. 214-217 443
  Discharge if same granted, sec 210.. 442
  Discharge of if unable to pay fine and costs, secs 390-391 475
  Discharge on examination, when, sec. 97 422
  Discharged if no warrant produced, sec 320 463
  Discharged, if verdict of not guilty, sec 337 465
  Duty of court before sentencing, sec. 366 471
  Duty of officer in capital offence, sec. 84 420
  Effect of discharge in case of one of several, sec 236 447
  Effect of acquittal on ground of variance, sec 223 444
  Same, on merits, sec. 224 444
  Same, bar to another indictment, sec 225 444
  Entitled to counsel on preliminary, sec 90 421
  Examination, of, for defence, secs. 80-116 419
  Exceptions may be taken by, when, sec 328 464
  Held in custody or on bail, if case re-submitted to grand jury, sec 215 443
  How discharged from same, sec 370. 471
  How recognized and located without examination, sec 80 419
  Judgment not to be entered against insane, sec 392 475
  Proceedings in such case, sec. 393. 475
  May appear by counsel in misdemeanor, sec 200 441
  May be cross-examined thereon, sec 93 422
  May be discharged to testify, sec. 309 462
  May demur or plead to indictment, and causes for setting same aside, secs 205-207 442
  May have testimony written down, sec. 92 422
  May make proof in defence, sec 292. 459
  May make statement under oath, sec 93 422
  May require witnesses to be excluded sec 113 425
  May testify in his own behalf, sec. 15. 502
  May waive preliminary examination, sec 111 424
  May withdraw and substitute plea, sec 221 444
  May withdraw plea to indictments, sec 221 444
  Motion in arrest of judgment, sec. 357 469
  Motion to set aside indictment, sec. 208. 442
  If same denied, must demur or plead at once, sec 209 442
  Must appear in person to plead in felony, sec 220 444
  Must be present at trial for felony, sec. 292 459
  Same, for other offences unless bond given, sec 252 459
  Must be present when arraigned for felony, sec 200. 441
  Must declare true name, and effect of refusal, sec 202. 441
  Not discharged for mistake in charge of offence, sec. 310 462
  Notice of motion for new trial, sec 356 468

PAGE.

DEFENDANT *in Criminal* Action.
Of appeals by to supreme court, secs. 394-409 476
One or more may be acquitted or convicted, sec. 175 437
Plea of not guilty, what deemed, sec. 222 444
Pleas to indictment, secs. 218, 219 444
Presence of, when judgment rendered on conviction, sec. 363 471
Pregnant female sentenced to death, proceedings as to, secs. 384-386 474
Proceedings, if insane, after judgment of death, secs. 380-383 473
Proceeding to impeach or remove public officer, secs 41-62 412
Rights as to witnesses, secs. 424-430 482
Rights of, secs 8-12 404
Rights, etc., as to challenge of grand jury, secs. 121, 122 428
Separate trials allowed where several defendants, sec 302 460
To be assigned counsel on arraignment, sec 196 440
To be removed to county to which venue taken, sec 227 445
To plead after demurrer overruled, sec. 216 443
To whom issues must be submitted, sec. 276 456
Transfer of cause to proper county, sec. 311 162
What defects waived by failure to demur, sec. 217 443
Witnesses excluded when statement made, sec 109 424

DEFENDANT, Criminal
In Probate or Justice's Court.
How named in complaint, sec 475 193
Complaint and warrant for arrest of, secs 474-477 493
Must be personally present at trial, sec 478 494
Arraignment of, sec. 479 494
Time to plead, sec 480 494
Entitled to counsel, sec 481 494
To make true name known, etc., secs. 482, 483 494
May demur, plead or answer, and how, sec 484 494
New complaint made, when, sec 485 494
Waiver of jury trial, or consent to less than twelve, secs 486, 487 494
Minute of waiver to be made, sec. 488 494
Right to challenge jury, sec 490 495
What may be found by jury in case several, secs. 490-496 495
Court to fix punishment, sec. 500 495
Recognized, and proceedings if punishment greater than court can inflict, sec. 501 495
Trial postponed for cause, sec 502 496
Committed for not entering into recognizance, sec 503 496
Proceedings, if to be tried for offence beyond jurisdiction of court, sec. 506 496
Judgment, how entered, secs 507, 508 496
May be committed for fine and costs, sec. 508 496
How discharged from same, sec. 509 496
Rights and duties as to appeal, sec. 510 497
Judgment on appeal, sec. 515 497
Execution for fine and costs, secs. 517, 518 497

DEFINITIONS.
Of terms used, sec. 451 488

See Construction of Statutes

DEGREES.
Of kindred established, secs. 538-542 397
Of murder, sec 21 505
Of arson, sec 68-70 514

PAGE

DEGREES.
Of consanguinity, marriages void, sec. 161 545
Of burglary, sec 74 515

DELEGATE TO CONGRESS
See Elections

DELIVERY
See Claim and Delivery

DEMAND.
For items of account, sec 101 85

DEMANDS
See Claims Against Estates.

DEMURRER.
To complaint, secs. 83-87 79
Not to be filed at same time as answer, sec 87 81
First disposed of, sec 87 81
Failure to file, or answer, effect of, sec 88 81
By plaintiff, when, and grounds of, sec 92, 93 83
To amend plea, when to be filed, sec. 115 88
If sustained, amendments allowed of course, sec 115 88
Filing of, deemed an appearance, sec 491 190
In case of contest of will, sec 20 280
To indictment, secs 205-217 442

DENTIST.
See License

DEPOSIT.
Of money with banks, limitation of action on, sec 46 69
Of money as bail, sec 128 92
Of money in place of bail, sec. 139 94
For bail, paid into court, sec 140 94
Substitution of bail for, sec. 141 94
How disposed of, sec 142 94
In court by trustee, etc, secs 235-237 117
Of damages in eminent domain, sec 612 221
In lieu of bail, returned on surrender, sec 459 488

DEPOSITIONS
When taken on postponement of trial, sec 254 121
Taken within territory, sec 678 236
Who may take and notice of, sec 679 236
Manner of taking and returning, sec. 680 237
May be read as evidence, secs 680, 681 237
Out of territory, when may be taken, and how, sec 682 238
Of non-resident witness, sec. 683 238
May be read as evidence by either party, secs 684, 685 238
How taken in justices' court, sec 819 271
Taking and use of, in criminal actions, secs 429-430 482
Secretary of territory may take, sec 1965 1206

DEPUTY
Justice may appoint to serve summons, sec 813 271
Same, liable for acts of, sec 813 271
Same, authority of, sec 814 271
County clerk to appoint, sec 831, 865
Sheriff may appoint, sec 852 872
Assessor may appoint when, sec. 906 884
Oath of, sec. 913, p 887, sec. 1067 939
Clerk of district court to appoint, secs 196, 197 645
When cannot be county treasurer, sec. 890 880

PAGE.

DEPUTY SHERIFF.
- Powers of, sec. 855 — 873
- To preserve the peace, sec 856 — 873
- Not to appear or advise as attorney, sec. 862 — 874

DESCENT.
- Of estates, secs. 531-557 — 395
  - See Succession.

DESCENDANTS
- Inheritance by, secs 532-557 — 395
- Of lineal, of equal degrees, sec 534 — 395

DESTRUCTION
- Of property by fire, secs 68-72 — 514
- Of valuable papers, sec 90 — 521
- Of land boundary, sec 91 — 521
- Of proclamation or advertisement, sec. 173 — 548
- Of property, when malicious, secs. 214, 215 — 560

DETAINER
- See Forcible Entry and Detainer

DETENTION.
- Unlawful, of person, sec 56 — 511

DEVISE
- See Wills

DEVISEE.
- See Wills

DICE
- Certain games at punished, secs 208-210 — 558

DIES, Etc.
- For counterfeiting, sec 103 — 526

DISABILITY
- Of party, not to abate action, sec. 22 — 63

DISCOVERY.
- Of new evidence, ground for new trial, sec 296 — 135
- Under oath when allowed, sec. 668 — 234
  - See Evidence.

DISEASE
- Inoculating contagious, sec 223 — 562
- Exposing infected clothing, sec 223 — 562

DISMISSAL
- Of civil actions, sec. 242 — 118
- For want of cost bond, sec 515 — 196
- Judgment in case of, sec 244 — 119
- Of appeal, if requisite papers not furnished, sec 438 — 178
  - See Actions, Civil.

DISOBEDIENCE
- Of subpœna by witness, punished, sec 661 — 233
- Of writ of mandamus, sec 578 — 208
- Of writ deemed contempt, sec 584 — 209

DISQUALIFICATION.
- Of juror, sec 258 — 123
- By embezzlement, sec. 88 — 519
- By conviction of bribery, secs 111-113 — 529
  - See Referees

DISSOLUTION
- Of injunction, secs. 176-180 — 101
- Of incorporations, how effected, sec 488 — 740
- Powers of trustees after, sec 489 — 740

DISTILLER.
- See License

PAGE.

DISTRIBUTEE
- Of estate must refund to pay debts, sec 287 — 345
- Share of, when paid into treasury, sec. 308 — 351

DISTRIBUTION.
- Of estates, secs 284-313 — 345
- Of non-resident, secs 300-313 — 349
- Appeal from order making, sec. 324 — 354
- Of proceeds of sale in partition, sec. 398 — 169

DISTRICT
- See Judicial Districts

DISTRICT ATTORNEY
- Bribery of, punishment, sec 112 — 529
- Cannot comment on defendant's statement, sec 15 — 408
- Clerk and sheriff to deliver fee bills to, secs 420, 421 — 480
- Duties as to act concerning purchase and sale of votes, sec 1070 — 941
- Duties of, in suit for usurpation of office or franchise, secs 411-416 — 171
- Entitled to supreme court reports, sec 1995 — 1215
- Impeachments of, sec 62 — 415
- May except to rulings of probate and justice's courts, sec. 526 — 498
- May inststute suit on recognizance, sec 26 — 408
- Notice and duties on inquisition of pregnancy, sec 384 — 474
- Official bond of, to be recorded, secs 1586, 1587 — 1080
- Rights and duties as to grand jury, secs 134-136. — 430
- To apply for habeas corpus, when, sec 387 — 474
- To attend inquisition, sec. 381 — 473
- To have notice of application to admit to bail, sec 241 — 449
- Same, of inquisition of insanity of prisoner, sec. 380. — 473
- To make out complaint on arrest, when, secs 134-136 — 430
- To prosecute for circulating checks, etc sec 224 — 565
- To proceed against delinquent county officers, sec 971 — 908
- To sue for property and maintenance of insane, sec 1217 — 986
- When official term to begin, sec 1040 — 933
- When to certify amount of costs, sec 410 — 479
  - See Territorial Officers.

DISTRICT COURTS
- Actions, when transferred to probate court, sec 705 — 243
- Appeal from to supreme court, secs. 418-443 — 173
- Appeal from, when allowed, sec 444 — 180
- Appeals from justice's court, how tried, sec. 826 — 273
- Appeals from probate court, secs 445, 446 — 181
- Hearing of same, sec 447 — 181
- Same tried de novo, secs 449-457 — 181
- Same, how taken, sec 450 — 181
- Are courts of record, sec. 543 — 202
- Clerk of, See Clerk of District Court
- Contempts of, secs 584-596 — 210
- Created, sec. 696 — 242
- Criminal action, process in, how executed, sec 454 — 488
- Same, transfer of from probate or justice's court, sec 501 — 495
- Duty as to forfeiture of railroad charter sec. 688 — 815
- Duty as to property inherited by alien or foreigner, sec. 554 — 400
- Hearing and judgment in criminal actions appealed to, secs. 513-515 — 497

PAGE
DISTRICT COURTS
Same, cases now tried, sec 516, p 497
secs 528-530 499
Judge of, may grant writ of habeas corpus, sec. 1166 975
Same, duties of in such case, sec. 1167 975
Judgment on issue of fact, sec 280 130
Judgment on issue of law, sec. 281 130
Jurisdiction of, sec 699 242
Same, appellate, sec 701 243
Same original, sec, 700 243
Jurisdiction of, as to crimes, sec 6 404
Jurisdiction of, in action for divorce, sec 1000, 1006 920
Jurisdiction of, in *misdemeanors of* board of commissioners, sec. 269. 580
Justification of sureties, sec 453. 183
May appoint trustees or receivers for corporations, sec. 230 116
May establish rules for practice, sec. 523 198
May hear divorce in private, sec 545 203
May order judgment after death of party, sec 305. 139
May place plaintiff in possession, sec. 614 221
May restrain waste pending redemption, sec 346 153
Of costs on same, sec. 456, 183
Order of sale in partition and reinvestment of proceeds, sec. 401. 169
To protect all interests in such case, sec. 406 170
Power of Judges at Chambers, sec 704 243
Power to enforce authority, sec. 702. 243
Powers as to controversies between parties. sec 26. 64
Powers of, sec. 546 203

See Writ of Certiorari and Mandamus, secs. 584-596 210

Powers under eminent domain, sec 607 217
Duties of court and jury in same, sec. 608 218
Order of condemnation in same, sec 613 221
Proceedings in eminent domain, secs. 601-603 216
Proceedings to condemn lands for railroad, sec. 685 812
Same, for corporations, sec. 487 737
Prosecutions in, for crimes conducted by indictment, sec. 5 404
Refusing to allow exceptions, sec, 291 133
Sittings of, to be public, sec. 544. 203
Stay of proceedings on appeal, sec. 455 182
Stay of proceedings on motion for new trial, sec. 300. 138
Terms of, sec 703 243
To disregard errors in pleadings, when, sec 119 89
To have a seal, sec. 527 199
Transcripts of judgment in probate court, recorded in, sec. 710 244
Transcript on appeal to, sec. 454 182
Trial by, sec. 279 129
Trial of forcible entry and detainer in, secs. 731-733 249
Undertaking for costs, sec 452 182
Undertaking in, sec. 450 182
What expenses paid by county, sec. 703 243
When clerk to adjourn, sec. 531 199
When may dispense with cost bond on appeal, sec 428 176
When may order property sold before judgment, sec. 541 202

See Courts.

DISTRICT JUDGE
Office created, sec. 699 242

PAGE.
DISTURBANCE OF THE PEACE.
By fighting or loud noises, secs 141-153 538
By unlawful assembly, secs. 142-144 538
By affray, sec 143 538
By riot, sec 145 539
Disturbing congregation, sec 146 539
By selling liquors, sec. 152 541
Duty of officers respecting, sec. 153 541

DITCH.
Injuring or obstructing punished, sec 162 546
Maliciously cutting, sec. 219 561
Of damages to roads and highways, sec. 255 576
Company, how incorporated, sec. 473 733
Rights of company, sec 474 733
Rates of water fixed by county commissioners, sec. 475 733
Banks of kept in good condition, sec. 476 734
Certificate of organization of company, sec. 477 734
Right of way for, sec. 1240 993
Liability for damages by digging, etc , sec 1244 994
To be kept in repair at crossings, etc., sec 1247 994
Penalty against offenders, sec 1245. 994

DITCHES AND FLUMES
Neglect to repair, sec 234 569
See Corporations

DIVIDEND.
See Corporations.

DIVISION
See Partition.

DIVORCE.
Trial may be private, when, sec 245 203
For what causes granted, sec. 999 919
Effect of on children, sec 999 919
By what court and practice granted, sec 1000 920
Residence of parties necessary, sec 1001. 920
Not decreed in case of collusion, sec. 1002 920
Same, if both parties guilty of adultery, sec. 1002 920
When *tried by jury, sec. 1003* 920
Reference to master, sec 1003 920
Marriage out of territory, how proved, sec. 1003. 920
Alimony and custody of children, sec 1004 920
Poor woman may prosecute without paying costs, sec. 1005 920
Proceedings same as in chancery, sec 1006 921

DOCKET
Of judgments, how kept and form of, sec. 308 140
When open for inspection, sec. 309 140
Effect of transcript filed, sec 310 140
Satisfaction of judgment in, sec. 311 140
Of transcript of judgment from justice's court, sec 800 266
Of justice of the peace, secs 805-806 269
Entries to be primary evidence, sec 806 270
Index to, sec. 807 270
Justice to deliver to successor, sec 808 270
Power of successor, sec 809 270

DOCUMENTS
Subpœna for, sec, 654 231
Evidence of contents of, sec 627 224

DOGS.
Stealing of punished, sec 80 517

PAGE.

DOMESTIC ANIMALS
See Animals

DRAINS OR DRIFTS
Within 20 feet of highway, penalty for, sec. 255 — 576

DROVER
Driving away stock of another, penalty for, sec 95 — 522

DRUGS AND MEDICINES.
Adulteration of, sec 181 — 551
Prescribing poisonous, sec 182 — 551
Druggist shall keep record of sales of poison, sec 184. — 552
Penalty for failure, sec. 185 — 552
Record to be open to inspection, sec. 187 — 552

DRUGGIST.
To label poison, sec 183 — 551

DRUNKENNESS
No excuse for crime, sec 8 — 501
Punishment of person causing, sec 8 — 501
Executor disqualified by, sec 45 — 287
Administrator disqualified by, sec 59 — 290
Habitual, cause for divorce, sec 999 — 919

DUEL
Witnesses of, sec. 17 — 503
When killing in deemed murder, secs 22, 23. — 505
Challenging to fight, penalty for, sec 45 — 509
Officer to prevent, sec 153 — 541

DWELLING HOUSE.
When exempt from execution, sec. 326 — 148
Punishment for burning, secs 68, 69 — 514
Breaking and entering, secs 73, 75 — 515
Malicious injury to, secs 216, 217 — 560
Set apart for widow and children, sec 229 — 148

EARNINGS
Exemption of, from execution, sec 321 — 145

EASEMENT.
See Eminent Domain.

EDUCATION.
Of ward by guardian, sec 370 — 367

See Schools.

ELECTION LAWS
Violating, at election for capital, sec. 230. — 566

ELECTIONS
Ballots and manner of voting, secs 1018, 1019 — 926
Ballot-box regulations in regard to, secs 1022, 1023 — 928
Clerk, how chosen, sec 1612 — 924
Challenges, oath and form of, and duty of clerk of, sec 1021 — 926
General, when held, sec. 1009 — 924
Judges, how appointed and notified, sec. 1011 — 924
Same, who qualified to be, sec. 1011 — 924
Same, to post notices, sec 1011 — 924
Judges not serving, how vacancy filled, secs 1011, 1012 — 924
Judges, term of office, sec 1012 — 924
Notices to be mailed, and form of, sec 1013 — 925
Same, time and place of posting, sec 1014 — 927
Opening and closing polls, sec 1017 — 926
Oath of judges and clerks, secs 1015, 1016 — 927

PAGE

ELECTIONS
Poll book, ballot-box and key, how kept, etc, secs 1025, 1026 — 928
Same, how and when returned to board of judges, sec 1026 — 928
Poll lists to be compared, etc. sec 1024. — 928
Precincts, how established, sec. 1011 — 924
Who disqualified, sec 1008 — 923
Who entitled to vote, sec 1007 — 923
Who ineligible to legislature and congress, sec. 1010 — 924
Where, how and for whom elector may vote, sec 1020 — 926

Canvass of votes
Abstracts of vote, clerk to make and transmit to auditor, sec 1034 — 935
Appointees to qualify, sec. 1050 — 931
Ballot-box and key, directions for keeping and penalty for violating this act, sec 1053 — 936
Canvass of vote, abstracts for districts and certificate of election, sec 1037 — 932
Canvass of vote for delegate by territorial officers, sec 1034 — 931
Certificate of election, sec 1033 — 930
Contests of election of county and township officers, sec. 1043 — 934
Compensation of election officers, sec 1038 — 933
Duty of auditor and clerk if county returns not received, sec 1035 — 931
Fees of judges and clerks paid by county, sec 1033 — 930
Form of poll books and oaths, sec 1054 — 936
If tie vote, new elections ordered, sec 1033. — 930
Misspelling and abbreviations disregarded, sec 1042 — 934
Pay of messenger, sec 1035 — 931
Person elected may resign, sec. 1036 — 932
Poll books to be provided by county commissioners, sec 1051 — 936
Same, to be mailed by county clerk, sec. 1052 — 936
Poll books, return of to clerk of county commissioners, sec 1031 — 929
Same, duplicate and ballot-box, how and by whom kept, sec 1031 — 929
Same, open to inspection, sec 1031 — 929
Penalty for violation of law by officers, sec 1039 — 933
Same, penalty for failure to mail, sec 1032 — 930
Returns and abstracts of votes, when, how and by whom made, sec 1033 — 930
Returns to be procured before canvassing vote, sec 1035 — 931
Resignations, to whom made, sec 1041 — 935
Tie vote for delegate, new election ordered, sec 1034 — 931
Trial, of contests, sec 1044 — 934
Term of office, when to begin, sec 1040 — 933
Vacancy in legislative office, how filled, sec 1036 — 932
Vacancies, how created, secs 1046-1047 — 935
Votes, how canvassed and certified, sec 1027. — 928
When county commissioners or governor to appoint, sec 1049 — 935
When governor may fill vacancy, sec 1048 — 935
Who deemed elected, sec 1041 — 934

PENALTIES
Challenge, form of oath, rejection of vote and penalty for illegal vote, sec 1880 — 1180
Duty of district attorney, sec 1070. — 941
For fraudulent voting, or attempt to vote, sec 1061 — 938
For establishing precinct in unorganized county, trading post or re-

PAGE.
PENALTIES.
servation, sec. 1055 . . 937
For intimidating, hindering, or corrupting election, sec. 1063 . . . 939
For judge, clerk, or commissioner failing to perform duties, sec 1057 938
For perjury or other violations of election law, sec. 1064 . . . 939
For non-performance of duty by officers, sec. 1035 . . . 931
For receiving or counting returns of pretended elections, sec. 1056 937
For stuffing ballot-box or false count of votes, sec. 1058 . . . 938
For tampering with ballot-box, ballots or poll books at election, sec 1059 . . . 938
For voting more than once, or double tickets, sec. 1062 . . . 939
For voting in name of another, sec 1060 . . . 938
Of school trustees, when and where held, notice of, and how conducted, sec 1880. . . . 1180
Paying or contributing to procure election or appointment, sec 1067 939
Same, what expenses legal, sec 1067 939
Same, oath of person elected or appointed in regard to, sec 1067 . 939
Penalties for violating act as to purchase and sale of votes, secs 1068, 1069 . . . 941
Purchase and sale of votes prohibited, secs 1065, 1066. . . . 939
Clerk to issue certificate of election of school trustees, sec 1880. . . 1180
For special tax for schools, sec 1905. 1189
To divert fund derived from town lots to general school purposes, sec. 1947 . . . 1201

ELECTION to Change County Seat, secs. 978-980. . . . 910
See Legislature, Votes.

EMBEZZLEMENT.
When person may be arrested in civil action, secs. 121-123 . . . 90
Jurisdiction as to trial for, sec 746 254
Arrest for, sec 746 . . . 254
Of estate of decedent, liability for, sec 129. . . . 303
Same, proceedings to recover, secs. 130-132 . . . 303
Suspension of officer for, sec 61 . 414
Buying goods obtained by, penalty for, sec. 82. . . . 518
Bringing same into territory, sec 84 518
By public officer or servant, secs. 87-89. . . . 519
Of public funds, sec. 88 . . . 519
Officer disqualified by, sec. 88 519
Advising or participating in conversion of funds, sec 89 . . . 520
By clerk, servant or employee, sec. 92 522
By bailee, sec. 93 . . . 522
By lodger, sec. 94 . . . 522

EMBRACERY.
Punished, sec 130 . . . 379

EMINENT DOMAIN.
Right of defined, sec 597 . 214
For what uses exercised, sec 598 214
Estates taken for public use, sec 599 215
Right to take private property, sec. 600. . . . 215
What to appear to authorize taking of private property, sec 601 . 216
Survey of land taken, sec. 602. 216
Proceedings in district court, sec. 603 216
Of the complaint, sec 604 . . . 216
The summons, sec. 605 . . . 217
Of defences, sec. 606 . . . 217
Powers of court, sec 607 . . . 217
The hearing, sec 608 . . . 218
Duty of commissioners, sec. 608 . 218
Report of commissioners, sec. 608 219

PAGE
EMINENT DOMAIN.
Measure of damages, sec 609 220
Perfection of title, sec, 610. 220
Payment of damages, sec. 611 220
Payment to defendant or deposit in court, sec 612 221
Execution to issue, when, sec. 612 221
Final order of condemnation, sec. 613 221
Of possession by plaintiff, sec 614 221
Costs under proceeding, sec. 615 221

EMPIRICISM
Punishment of, sec 231 567

EMPLOYEE
See Wage Workers.

ENCLOSURE
Leaving gate to open, sec 275 582

ENDORSERS.
Liability of, sec. 5 . . 61

See Bills of Exchange and Promissory Notes.

ENDORSEMENT
Of complaint by clerk, sec. 67 . 74

ENGLISH LANGUAGE.
Use in written pleadings in court, sec 526 . . 199

See Pleading

ENTRY.
See Forcible Entry and Detainer,

EQUITY.
Proceedings, same as at law. sec 1 59

ERROR.
In law, cause for new trial, sec. 296 135

See writ of Certiorari.

ERRORS.
When *disregarded in pleadings*, sec 119 . . 89

ESCAPE.
Of prisoner in civil action, sheriff liable, sec 143 . . . 94
Persons arrested, pursuit and recapture of, sec 74 418
Of convict, penalty for assisting, sec 121 . 532
Officer procuring or aiding convict to, sec. 123 . . 533
Conveying tools or other aid to convict, sec. 124 . . 533
Assisting prisoner to, penalty, sec 126 . 533
Officer aiding or permitting prisoner before conviction, sec 127 534
From prison, sec 229. . . 566
Governor may offer reward, sec. 284 584

ESCHEATS.
See Succession.

ESTATES.
See Eminent Domain

For life or years, set off in partition, sec. 395 . 168
Of unknown persons, protected, when, sec. 401 . 169
Power of probate court over, sec 707 244

ESTATES OF DECEDENTS.
Administration on, secs 1-557 274
Demands against, notice, presentation and allowance of, secs 147-169 310
Same, interest bearing, when paid, sec 170 . 315
Same, property liable for, sec. 171. . 318

PAGE
ESTATES OF DECEDENTS.
Money may be borrowed to pay, sec 172 318
Sales of, and conveyance of property for, secs 173-24 318
Partnership, secs. 229-231 332
Conveyance under contract, made by deceased, secs 236-242 334
Investment of money of, sec. 272 341
Payment of demands against, secs 273-293 341
Distribution and partition of secs 281-311 343
Unclaimed, how disposed of, sec, 308 351
Appeals from decisions affecting secs 324, 325 354

See public Administrator.

ESTRAYS
See Animals

EVICTION.
Purchaser may recover purchase money, sec. 347 153

EVIDENCE IN CIVIL ACTION
Varying from pleadings, sec 112 87
Insufficiency of, cause for new trial, sec 298 135
Execution book to be, sec 315 143
Concerning mining claims, sec 375 160
Copy of records certified, sec 542 202
Patents and receiver's receipts, etc, recorded, sec 539 201
General principles of, sec 616-643. 243
Sufficiecy of, sec. 616 223
Postponement of trial for, and statement of, secs, 253, 254 121
Facts to which witness may testify, sec 617.. 223
Examination of witness, sec 618 223
Presumption in favor of witness, sec 619 223
Parties as witnesses, sec 620 223
Of parties to real estate title, sec 621 223
Res gestæ, sec 622 223
Where obligation of third party in dispute, sec 623 223
Declaration of member of family, sec 624 223
Of decedent against interest, sec, 625. 224
What part of subject introduced, sec 626 224
Contents of writing, sec 627 224
Construction of written contract, secs 628-637 224
Same, from county officers, sec 925 889
Of title to improvements, in public domain, sec 1663 1103
Of copies certified by secretary of territory, sec 1968 1207

See Witnesses, Depositions

EVIDENCE IN CRIMINAL CASE,
Record of conviction to be, of forfeiture of recognizance, sec 26 408
What received on examination, sec 91 421
Only legal, received by grand jury, sec 145 431
Grand jury not bound to hear, for defendant, sec 146 432
What required in trial for treason, sec. 295 459
Same, for conspiracy, sec 296 459
What sufficient in trial for rape, sec 297 460
Of existence, etc, of corporation, sec 298 460
What to be offered by attorney prosecuting, sec 307 461
By deposition, secs 429, 430 482
Of party injured by crime, sec 14 502

PAGE.
EVIDENCE IN CRIMINAL CASE
Of parties jointly concerned, sec 14. 502
Of defendant for himself, sec 15 502
Of witnesses of duel, sec. 17. 503
Proof of mitigation of killing, sec. 40 508
Of embezzlement by officer, sec 89. 520
That bank is incorporated, sec 104. 526
Of experts, sec 105 526
Of overt act in conspiracy, sec 132 535
Of truth in libel, sec. 154 541
Of marriage in bigamy, sec 155 543
Of liquors deceitfully obtained by soldier, sec 190 553

EXAMINATION OF MINES
Order for, how obtained, sec 376 162

EXAMINATION IN CIVIL ACTION.
For justification of bail, sec 137 93
Duty of court or clerk in such case, sec 138 94
For discharge from jail, sec 150 95
Of witnesses, sec 618 223
Of parties to action, secs 668-671 234
Of adverse party, sec 669 234
Rebuttal testimony, sec. 670 234
Refusal of adverse party to testify, sec 671 235

See Bail, Witnesses, Arrest and Examination

EXAMINATION ON CRIMINAL CHARGE
As to person threatening offence, sec 21 407
Warrant to issue for same, sec 22 407
Prior to issuing warrant, sec 77 419
Of offenders, sec 63-116 417
Adjournment of, sec. 86 420
Preliminary, of offenders, sec. 90 421
Unnecessary delay in, sec 95 422
Continuance of, sec 95 422
To be certified to court having jurisdiction of offence, sec 105 423
Transmission of papers to clerk of court, sec. 110 424
Waiver of, sec 111 424

EXCEPTIONS
Against sureties, by defendant, sec 160 48
Definition of, sec 289 133
What deemed to have been taken, secs 290-293 133
Points, how stated and recorded, sec 291 133
Interpretation of writings, sec. 629. 225
Duty of court construing statute or writing, sec 630 225
Of the intention, sec 631 225
Circumstances of execution considered, sec. 632 225
Presumptions in construing writing, sec. 633. 225
Written to control printed matter, sec 634 225
Of experts as witnesses, sec 635 225
Of intention of parties, sec 636 226
Rule for construing writing, sec 637 226
Where statute susceptible of different construction, sec 638 226
Material allegations to be proven, sec 639 226
To correspond with pleadings, sec 640 226
Enquiry into collateral facts, sec 640 226
Allegations each party to prove, what, sec 641 226
Facts which may be proven in trial, sec 642 226
Facts, of which court may take notice, sec 643 228
Parties to action, secs 668-671 234
Of adverse party, sec. 669 234

PAGE

EXCEPTIONS.
Rebuttal testimony, sec. 670 234
Refusal of adverse party to testify, sec 671 234
Of affidavits, sec 672 235
As to title to real property, prohibited in justice's court, sec. 779 261
Entries in justice's docket to be prima facia, sec. 806 270
Of transcript showing appointment, etc., of administrator or executor, sec 108 298
Of execution of conveyance, sec 245 659
When conveyance may be read as, sec. 263 662
Of lost conveyance, sec. 264 662
Of certificate of incorporation, sec 456 727
Of official copies from county clerk, sec 839 868
Form of, secs 292-294 134
Must be signed by judge, sec. 294 134
When deemed made without special notice, sec 293 134
On motion for new *trial*, secs 297, 298, 301 135
To sureties on appeal, sec. 430 176

EXCEPTIONS IN CRIMINAL ACTION.
Taken as in civil actions, sec 328 464
Of defendant, sec 339 466
Of territory, sec 340 466
Bill of, settled, sec 349 467
Contents of bill, sec. 350 467
Filing of, sec. 351 468
In probate and justice's court, secs 526, 527 498

EXCUSABLE HOMICIDE
Defined, secs. 37, 38 507
Defendant discharged, sec 39 508
Same, burden of proof on, sec. 40 508

EXECUTION.
Action against third party claiming property of judgment debtor, sec 356 157
Against boat attached, sec. 218 113
Answer to garnishee, sec. 353 156
Answer of judgment creditor, sec 351 156
Answer of judgment debtor, sec 350. 155
Application of homestead right, sec. 330 148
Bids may be refused, when, sec. 336 150
Book to be kept, form of, sec. 315 143
Discharge of person confined on, in civil action, sec 147 95
Directing sale of possession of realty, sec 427 175
Stay of, on appeal from probate court, sec. 455. 182
Exemption of dwelling house, sec 326 148
Extent of homestead exemption, sec. 323 147
Selection of homestead, secs 324, 325 147
Homestead exempt, sec. 322. 147
Homestead exemption after death, sec. 327 148
How enforced, sec 316 144
In attachment, how satisfied, sec. 194 108
In case of death of party, sec 317 144
Issued in different countries, sec. 318 144
Judge may order property applied on, when, sec. 355 157
Liability of bidder, sec. 335 150
Liability of officer, sec. 347 153
Notice of sale of real estate, sec 332 149
Payment to sheriff by person owing judgment debtor, sec. 352 156
Property claimed by third party, sec. 320 145
Property exempt from, sec. 321 145
Property liable to, sec 319 144
Proceedings, if returned unsatisfied, sec. 351 155

PAGE.

EXECUTION.
Penalty for selling under without notice, sec. 333 149
Sales, how made, sec 334 150
Stay of, on appeal, secs 425, 426 175
Return, and duty of clerk, sec 315 143
Redemption from sales under, secs 341-345. 151
Removal or sale of homestead not to affect lien, sec. 328 148
What to contain, sec. 313 142
What to direct when against a part of defendants, sec 314 143
When may issue, sec 312 142
Writ, how executed, sec 331 148
Widow's right to homestead, sec 329 148
In case of mandamus, sec. 576 208
In eminent domain, sec. 612. 221
In forcible entry and detainer, sec 724 248
From district court on transcript from justice's court, sec 800 266
In justice's court, when to issue, how directed and what to contain, secs. 801, 802 267
Same, how executed, sec. 803 267
Proceedings supplementary to, sec. 803. 267
May be issued by successor of justice, sec 809. 270
From justice of the peace, when void, sec. 811 270
How stayed on appeal from justice's court, sec. 827 273
How issued after lapse of five years, sec 349 154
Against executor or administrator, not allowed, sec 161 313
On judgment against decedent, not to issue, sec. 162 314
For costs in probate court, sec. 330 356
Not to issue against county commissioners, sec 751 843

See Wage Workers

EXECUTION IN CRIMINAL CASE
Of criminal, may be suspended for cause, sec 379. 473
For fines and costs, to be issued, sec. 389 474
For costs, sec 411 479
On judgment appealed to district court, sec. 517. 497
For fine or costs in probate or justice's court, sec. 518 497
Same, return of and moneys collected, sec. 521 498

See Judgment, Sentence.

EXECUTION BOOK
Clerk to keep and what recorded in, sec. 315 143

EXECUTOR.
May sue without joining cestui que trust, sec 6 61
No rights as to homestead, sec 327 148
Costs of suit by or against, how paid, sec 605 194
Power of probate court over, sec 707 244
Seal of court necessary on appointment of, sec. 5 275
Petition for probate of will, secs. 9, 10 278
Notice to of probate of will, sec 14. 279
Powers cease on revocation of will, sec 34 283
Restrained from injury to claimants under lost will, sec. 40 284
Issue of letters to and to qualify, sec 44 287
Who cannot be, sec. 45. 287
Persons may object to, sec. 46 287
Woman as, authority of, sec 47 288
Married woman may be executrix of will, sec. 47 288
Letters de bonis non, sec. 48 288

PAGE.

EXECUTOR
  Executor absent from territory, proceedings, sec 49 288
  Those appointed, authority of, sec 50 288
  Form of letters testamentary, sec 52 288
  Oath of, sec. 74 292
  Bond of, secs. 75-93 293
  Succeeding administrator, powers of, secs 103, 104 297
  Same, one incapable, the other to act, sec 104. 297
  Appointment to fill vacancy, secs 105, 106 297
  Commissions allowed, sec 253 338
  Intention of testator as to, sec 523 393
  Executor not to appoint, sec. 524 394
  When power of commences, sec 525 394

EXECUTORS AND ADMINISTRATORS
  Actions against, for waste or conversions of property, sec 228 332
  Are personal representatives of decedent, sec. 533 395
  Authority and proceedings to arbitrate claims, secs 164-165 314
  Authority to pay interest bearing claims, sec 170 315
  Allowance of claims by, secs 150-154 310
  Claims of, against deceeents, how allowed and collected, sec 167 315
  Compounding of debts by, sec. 232 332
  Discharge of, sec. 312 352
  Distribution of estate, secs 284-313 345
  Duty as to estate fraudulently conveyed by decedent, secs 233-234 333
  Duty as to payment of claims, secs 276-283 342
  Duties as to inventory and appraisement, secs 118-126 304
  Endowment of same, sec 160 313
  Exhibits to probate court, secs 254-271 338
  Expenses and fees allowed to, secs. 251-253 337
  Final account and settlement, secs 282-283 343
  Individually liable for costs, sec 166 315
  Same, how allowed and repaid, sec 166 315
  Letters revoked for contempt, sec 331 356
  Liable on bond for misconduct, etc, secs 219-220 330
  May borrow money, and proceedings therefor, sec 172 318
  May maintain action, sec 226 332
  Minor heirs to sue without advancing costs, secs. 562, 563 401
  Neglecting to give notice to creditors, letters to be revoked, sec. 168 315
  Not to purchase property of decedent, sec. 224 331
  Not to purchase claims against estate, sec. 252 338
  Of specific performance of contracts by, secs 236-246. 334
  Personal liability for debts of decedents, sec 279 343
  Public administrator to, surrender to, when, sec 337 358
  Recovery of estate embezzled or alienated, secs. 129-132 303
  Removal and suspension of, sec. 113-117 299
  Return of sale of property sec. 223 331
  Rights and duties as to possession of real estate, secs. 127, 128 303
  Rights and duties as to property and actions, sec. 127 303
  Sale of property of decedent, sec 174-224. 318
  To be cited for neglect, secs 255-263 336
  To publish notice to creditors, secs. 147, 148 310
  Same, proof of, sec. 149 310
  To return statement of claims, sec 169. 315

PAGE

EXECUTORS AND ADMINISTRATORS.
  Transcript of judgment against, when filed, sec 161 313
  Same, lien of, sec 161 313
  Take possession of estate and collect debts, sec 225 331
  Validity of acts, sec. 107 298
  When chargeable for debts of decedent, secs 247-250 337
  When entitled to letters by terms of will, sec 523 393
  Who may be parties in action, sec 231. 332
    See Administrators, Executors

EXEMPTION.
  Of property from execution, secs. 321, 322 145
  Of wages of laborer, sec 321. 145
  Of homestead, secs 322-330. 147
  To whom applies, sec. 330 148
    See Married Woman, Execution.

EXPERTS
  In trials of forgery, sec 105 526
  Testimony of, in criminal action, sec. 300 460
  Testimony of, sec 617 223
  Same, when admitted, sec 635 225
    See Witnesses.

EX PARTE
  Applications heard in chambers, sec 704. 243

EXPLOSIVES
  Penalty for keeping in town or village, sec 163, p. 540, secs. 238, 239 571

EXPRESS COMPANY.
    See Licenses

EXPRESS PROMISE
  Limitation of action, sec. 44 69
    See Implied Promise, New Promise.

EXHIBITIONS
    See Licenses

EXTORTION
  By threats, sec 64 512
  Of unlawful fees, sec. 134 536

EYE.
  Putting out, sec 45 509

FACT
  Issue of, defined, and when arises, secs 246-249 120
  How tried, sec 250. 121

FACTORY
  See Woolen Factory, Sugar Factory and Refinery.

FACTOR.
  When may be arrested, sec 121. 90

FACTS.
  Not in issue, how tried, sec. 3 59
  Statement of, in complaint, sec 85 80
  When issue of, arises, sec 246 120
  Same, must be tried by jury, when, sec 250. 121
  One witness sufficient to prove, sec. 616 223
  To what witness allowed to testify, sec 617 203
  What evidence given to prove, sec. 642 226
  Of which courts take judicial notice, sec 642 226
    See Evidence, Trials

FALSE IMPRISONMENT
  Limitation of action, sec, 45 69
  Defined and punished, sec 67 513

PAGE.

FALSE PERSONATION.
- Secs 117, 118 531

FALSE PRETENSES.
- Obtaining goods and other property by, penalty, secs 198, 199 556

FALSE SWEARING.
- Punished, secs. 109, 110 528

FALSE WEIGHTS Measures and Seals, sec. 204 557

FALSIFYING RECORDS.
- sec. 114 530

FAMILY.
- Evidence of deceased member of, sec. 624 223
- Of decedent, support of, secs. 133-139. 305
- Expenses, payment of, under will, sec. 208 328
- Effect of testamentary disposition to, sec. 491 389

FARMER.
- Property of, exempt from execution, sec. 321 145

FARO GAME
- Two-card box prohibited, sec. 208 558
- Keeper of place of, punished, sec. 208. 558

FATHER.
- Suit by for seduction of daughter, sec. 12 61
- Same, for death of child, sec. 13 61
- Summons against minor, served on, sec. 72, p. 76; sec. 744 253
- When entitled to be guardian of minor, sec. 419 376
- Inheritance by, sec. 534 395
- When illegitimate child to be heir of, sec. 536 397

FEES.
- In case of change of venue. sec. 64 73
- Usurper of office receiving punished, sec. 412 171
- Of attorneys, sec. 492 192
- Of referees, sec. 501 193
- Officers need not be included in bill of costs, sec. 508 194
- Pre-payment of, sec. 518 196
- Of jury in justice and probate court, how taxed, sec 519 196
- Itemized statement to be furnished, sec. 521 197
- Of interpreter, sec. 653 231
- Witness may demand in advance, sec 656 232
- Jurors may demand in advance, when, sec. 714 245
- Of justice of the peace on appeal, sec. 827 273
- Of appraisers of estates, sec. 119 201
- Of executors and administrators, secs. 251-253 377
- Of attorney appointed by probate court, sec. 328 355
- Of guardian, sec. 375 368
- Officer impeached disqualified from receiving, sec. 57 414
- Clerks of courts and sheriff to report to district attorney, when, secs. 420, 421 480
- Of witnesses in criminal cases, sec 426 482
- Same, not paid in advance, sec. 428 482
- Officer may deduct on return of execution, sec. 521 498
- Penalty for receiving illegal, sec. 134. 536
- Attorney licensed entitled to, sec. 102 619
- Same, penalty for receiving without license, sec. 111 622

PAGE.

FEES
- Same, lien of for fees, sec. 111 622
- Of clerk of probate court. sec 1088 948
- Of probate judge, sec. 314, p 674, sec. 820, p 863, sec 1088, p 948, sec 1219, p 986, sec 2020. 1222
- Of appraisers of land condemned, sec 487 737
- Of county commissioners, sec 705 844
- Of assessors, sec. 907, p 884, sec. 1790, p. 1149, sec 1975 1209
- Of justices of the supreme court, sec. 1101 953
- Of jurors and witnesses, sec 991 915
- Same, if unclaimed paid to county, sec. 1103 954
- Same, duties of officers in regard to, secs 1104-1106 954
- Same, transferred to county fund, sec 1105 954
- Same, penalty for failure to pay over, sec 1107 954
- Of judges, clerks and officers under election law, sec 1033, p 930, sec 1038 933
- Of messenger sent for election returns, sec 1035 931
- Of coroner, sec 1090 949
- Of county treasurer, sec 753, p. 843, sec 1906 1190
- Of master in chancery, sec 1092 949
- Of justice of the peace, sec. 1096 951
- Of commissioners for insane, sec 1218 986
- For commission of notary public, sec. 1572 1076
- Of clerk of school district, sec. 1686 1183
- Of inspector of weights and measures, sec. 2062 1233
- Fees for services of county officers to be collected for and paid into the county treasury, sec 931 891
- Officers to report quarterly; exceptions, sec 932 892
- Compensation of deputies, clerks, etc, sec 933 892
- Officers to keep an accurate account, of moneys received. sec 934 893
- Salaries to be paid county officers sec. 935 893
- Officers to pay into the county treasury moneys received by them quarterly, sec 936 896
- Duty of sheriff on expiration of his term of office, sec. 937 896
- Penalty for neglect to pay by county officers, sec. 938 896
- Bondsmen for county officers liable for neglect of county officers, sec 939 897
- Duty of county commissioners; form of receipt to be given by county officers, sec. 940 897
- Reasonable traveling expenses to be allowed sheriffs and deputies, sec 941 898
- Compensation of justices of the peace, sec. 942 898
- Compensation of constables, sec 943 898
- Mileage of county officers, jurors and witnesses, sec 944 899
- Salaries of certain officers fixed, sec. 945 899
- Salaries of clerks of courts, sec 946 899
- Salaries of deputy clerks, sec 942 900
- Fees of clerks of courts and deputies, sec 948 900
- Salaries of county clerks and recorders, sec 949 901
- Salaries payable quarterly, sec 950 901
- Fees of clerks and recorders, sec. 951 901
- Salaries of superintendents of schools, sec. 952 902
- Salaries of county treasurers, sec 953 902
- Payable quarterly, sec 954 903
- Compensation of assessors, sec 955 903
- Fees of sheriffs, sec. 956. 904

PAGE
FEES.
Fees of justices of the peace, sec 957 904
Fees of probate judge, sec. 958 905
Fees of constables and marshals, sec. 959 906
Statement of fees, sec. 960 906
No other compensation than as specified, sec. 961 906
Sheriff to make statement, sec 962 906
Act of March 12, 1885, repealed, sec. 963 906
Fees of clerk of the supreme court, sec 1071 941
Fees of clerks and deputy clerks of the district courts; penalty for receiving illegal fees, sec. 1072 942
Fees to be paid by parties to actions, and to be taxed as costs, sec 1073 943
Fees of sheriffs for sundry services, sec 1074 . 944
Fees for board of prisoners, sec. 1075 945
Repeal, sec. 1076 945
Fees for transporting prisoners to the penitentiary, to be paid by the territory, sec. 1077 945
Fees for board of territorial prisoners in county jails after conviction, sec 1078 946
Fees of jurors and witnesses, sec 1079 946
Fees of jurors, by whom paid in civil cases in justice and probate courts, sec 1080 946
Affidavits of jurors and witnesses, sec. 1081 947
Certificate to be given by clerk, sec 1082. 947
Payment of certificate, sec 1083 947
County clerk to keep register of orders issued, sec 1084 . 947
Order of payment by treasurer, sec 1085 947
No fee for affidavit, sec. 1086 948
Repeal, sec 1087 948
Fees of probate judges, sec 1088 948
Fees of constables, sec. 1089 949
Fees of coroners, sec. 1090 949
Fees of notaries public, sec. 1091 949
Fees of masters in chancery, sec. 1092 949
Fees of county clerks and recorders, sec 1093 950
Fees of justices of the peace, sec. 1094. 950
Fees of jurors on insane inquests, sec. 1095 951
Fees allowed justices of the peace and constables limited in total amount, sec 1096 951
List of fees to be posted in office, sec. 1097 952
Amount of fees to be endorsed on returned process, sec 1098 952
Persons liable for costs or fees entitled to an itemized bill, sec. 1099 952
Receipts to be given for fees paid when required, sec. 1100 952
FEES AND SALARIES of Territorial Officers.
Auditor, sec. 128 628
Secretary, secs. 1965–1968 1206
Superintendent of public instruction, sec 1864 1175
Treasurer, sec. 134 629
For filing attachments, etc., sec. 285, p 659; sec. 261, p. 662; sec. 842 868
Recording marks and brands, sec. 173 641
Services as clerk of commissioners, sec 771 848
Filing and indexing liens, sec. 1373 1030
Satisfaction of liens, sec. 1389 1034
Filing district mining records, sec 1434 1057
Distributing blanks for statistics, sec. 1975 1209
County Superintendents.
For examinations, etc , sec. 1870 1177
Sheriffs
On process from probate court, sec 458 183

PAGE.
FEES AND SALARIES of Territorial Officers
Arresting fugitive, sec. 461. 489
Miscellaneous, secs. 1076-1077 945
Transporting prisoners, sec. 1077 945
Penalty for charging illegal, sec. 864 874

FEE SIMPLE
Term, heirs, not necessary to convey, sec 278 664
See Eminent Domain.

FEE TAIL.
Persons seized in sec. 281. 664

FELON
Not to be witness sec 649. 230
Not permitted to vote, sec. 1008 923
Sentenced to hard labor, sec. 472 491
To have employment, sec. 473 491

FELONEOUS
Intent in homicide, sec. 32. 506

FELONY.
Definition of, sec 4 404
How prosecutions for conducted, sec. 5 . 404
Duty and privilege of witness in testifying 660 233
Conviction of, requisites for, sec. 8 404
Limitation of action for, secs 39, 40 . 410
By whom and when person may be arrested for, secs 66, 67 417
Arrest for, without warrant, sec. 66 417
When accessory may be tried, sec. 177 437
Arraignment for, without warrant, sec 200 441
Defendant must plead personally, sec. 220 444
Order for re-arrest for, sec. 264 452
Trial of See Trial
Defendant must be present during trial, sec 292 459
Defendant must be present when judgment pronounced, sec. 363 471
Reward for escaped felon may be offered, sec 459 488
Killing of person attempting, justified, sec. 32 506
Killing person resisting arrest by officer, sec 35 507
Assault to commit, sec 59 511
Assault to commit burglary, etc., secs 73, 74 515
Compounding, how punished, sec. 129 534
Persons declared guilty of, sec 224 565
At common law, punished, sec. 275 . 583
Attempt to commit, punished, sec. 285 . 584
Person convicted of, cannot be administrator, sec. 59 290
Stuffing ballot box or falsely counting vote, sec. 1057 938
Illegally destroying, possession of ballot box, ballots, poll books, etc , at election, sec 1059 938
Dealing in warrants, etc , by officer, sec 1583. 1079
Treasurer refusing examination of books, etc ; sec 148 632
See Crimes

FEMALE
May sue for seduction, when, sec 11. 61
Assignment of estate to be in partition, sec 299 349
Rape of, defined and punished, sec 46 509
Provisions of law extended to, sec 283 584

FENCES.
Malicious injury to, sec. 217 561
Legal fences defined, sec 1111 956
Penalty for violation, sec 1112 956

PAGE.

FENCES.
Barbed wire fences to be kept in repair, sec. 1113 957
Partition fences; sec 1114 957
Partition fences to be maintained at joint expense, sec. 1115 957
Fences when joint occupancy ceases, sec 1116 957
When partition fence removed, sec. 1117 957
Repairs of partition fences, sec. 1118 958
Liability of owners of stock for trespass, sec 1119 958
Stock trespassing may be retained, sec. 1120 958
Penalty for maliciously leaving gate to any enclosure open, sec 1121 959

FERGUS COUNTY.
See County Boundaries

FERRY COMPANIES
Franchise, when taken for public use, sec 600 215
Not to obstruct ford, secs. 226, 227 565
Penalty for malicious damage to property of, sec. 484 736
County commissioners may license, sec. 756 844
See Licenses.

FIERI FACIAS.
To be issued to enforce lien of mechanic, etc, sec. 1385 1033

FINES AND PENALTIES.
Limitation of action for, sec 45, p. 69, secs. 38-40 410
Action to recover, when tried, sec. 57 71
When person may be arrested in civil action, sec. 121 90
Defendant admitted to bail, when, sec. 244 449
Same, how released from, sec. 390 475
When execution for stayed on appeal, sec. 400 477

For Offences Against Life or Person.

Dueling, sec. 21 505
For murder in first degree, sec. 25 505
For involuntary manslaughter, sec 28 506
For manslaughter, sec. 29 506
For concealing death of bastard, sec. 41 508
For causing abortion, sec. 42 508
For challenge to fight duel, sec 43 509
For poisoning, sec 44 509
For mahem, sec 45 509
For rape, sec. 49 510
For buggery, sec. 50 510
Kidnapping, sec. 52 510
Attempting to kidnap, sec 53 510
Abduction, sec 55 511
Enticing or forcibly taking child, sec. 56 511
Abandoning child, sec 57 511
Assault, sec. 58 511
Assault with intent to commit crime, sec. 59 511
Assault with deadly weapon, sec 60 512
Assault and battery, sec. 61 512
Assault and intimidation with weapon, sec. 62 512
Poisoning spring, well, or reservoir, sec 63 512
Extortion by threats, sec. 64 512
Exhibiting weapon in threatening manner, sec. 65 512
False imprisonment, sec. 67 513
Carying concealed weapons, sec. 66 513

PAGE.

FINES AND PENALTIES.

For Offences Against Inhabitation or Other Property

Arson in first, second and third degree, secs 68, 69 514
Burning boat, vessel, etc sec 70 514
Burning crops, bridges, etc, 71 514
Burning with intent to defraud insurer, sec 72 514

For Offenses Against Property.
Altering or defacing marks and brands. sec 86 519
Robbery, sec 77 516
Burglary, sec 74 515
Buying or receiving stolen goods, sec 82. 518
Bringing same into territory, sec 80. 518
Destruction of accounts or papers, sec 90 521
Embezzlement by public officer or servant, sec. 87 519
Embezzlement of public funds, sec 88 519
Conversion of same, sec 89 520
Same, advising as to, sec 89 520
Larceny, sec. 78-80 516
Receiving stolen property, sec. 83 518
Removing or destroying corner, sec 91 521

For Forgery and Counterfeiting
Counterfeiting, sec 97 524
Counterfeiting gold, silver or bullion, secs 107-108 527
Counterfeiting seal, sec. 106 526
Driving off animals of another, sec. 95 522
Embezzlement by clerk or servant, sec. 92 522
False certificate to jurat or acknowledgment, sec. 140 537
Forgery, sec. 96 522
Forging bill or note, sec. 104 526
Larceny as bailee, sec. 93 522
Making or having false dies or plates, sec. 103 526
Passing or possession of counterfeit, secs. 98-99 524
Receiving, having or passing fictitious notes, bills, etc, secs. 101-102. 525
Selling goods with false stamps, sec. 100 525
Wearing badge of society, sec 119 531
See offences against public justice.

Aiding escape of convict, secs. 123-124 533
Aiding prisoner to escape, secs. 125-126 533
Bribery, secs. 111-113 529
Bribing juror, etc., sec. 130 535
Conspiracy, sec. 132. 535
Compounding felony or misdemeanor, sec. 129 534
False pretenses, secs. 117-118 531
For threats or menaces, sec. 137 536
Inhumanity or oppression of prisoner, sec. 115 530
Juror receiving bribe, sec. 131 535
Officer not turning over office and property, sec. 116. 531
Opening or reading another's letter, sec 138 537
Officer refusing to arrest or receive person charged with offence, sec. 128 534
Officer stealing or falsifying record, sec. 114 530
Perjury, sec. 109 528
Personating another, sec. 117 531
Procuring execution of innocent person, sec. 110 529
Rescue or escape of convict or person charged or in custody, secs. 121-125 532
Resisting or obstructing officer, sec. 120 532

PAGE
FINES AND PENALTIES.
  Usurpation of office, sec. 133 535
For offences against the public peace.
  Affray, sec 143 538
  Disturbing religious worship, sec 146 539
  Disturbing the peace, sec. 141 538
  Same, by two or more persons, sec 142 538
  Keeping combustibles in town or village, sec. 136, p. 546, secs 238, 239 571
  Libel, sec 154 541
  Prize-fighting, secs 147-151 539
  Riot, sec 145 539
  Sale of liquors in variety theatre, etc , secs. 259-264 578
  Sale of intoxicating liquors within two miles of railroad in process of construction, sec 265 578
  Selling liquor near camp meeting, sec. 152 541
  Unlawful assembly, secs 142-144 538
For offences against public morality, etc.
  Adulterating food, liquor or medicine, or selling same, secs. 176, 177 549
  Adultery or incestuous marriages, sec 161 545
  Bigamy, sec. 155 543
  Failure to obey posse comitatus, sec. 159 544
  Failure to suppress riotous assembly,, sec 169 544
  Furnishing liquor to soldiers, sec 188. 552
  Gambling, secs. 206-209 557
  Having burglars' tools or weapons, sec 174 549
  Keeping play or gaming house open on Sunday, sec 157 544
  Marriage of unmarried to married persons, sec. 156 543
  Neglect or refusal to join posse comitatus, sec 175 549
  Nuisance, sec. 173 548
  Obstructing roads and highways, sec. 162 546
  Permitting minors to resort to saloons, sec 241 572
  Physician prescribing while drunk, sec 182 551
  Selling liquor to Indians, sec 160 544
  Selling poisons without label, sec. 183 551
  Soldier obtaining liquor, sec. 189 552
For offences of cheats, swindles, etc.
  Defrauding creditors, secs 202-203 557
  Failure to account for minerals reduced, sec 205 557
  False pretences, secs. 198, 199 556
  False weights and measures, secs 201, 204 556
  Fraudulent conveyance, sec 197 555
  Fraudulent transfer of real estate, sec 200 556
  Furnishing arms to hostiles, sec. 211 559
  Owner of place permitting certain games, sec 210 559
  Playing or betting on same, sec. 208. 558
  Malicious mischief, secs. 214-223 560
For offences under election laws
  Establishing illegal precinct, sec 1055 937
  Failure to return poll books, sec 1032 930
  Fraudulent voting or attempt, sec 1061 938
  In regard to changing county seats, sec. 245 659
  Intimidation, hindering or corrupting, sec 1063 939
  Neglect of duty as to election returns, sec. 1035 931
  Officer failing to perform duties, sec 1057 938
  Officers violating election laws, sec 1039 933
  Same, of sec. 1009, p 925, sec 1053 936
  Perjury, etc., sec, 1064 939

PAGE.
FINES AND PENALTIES
  Purchase or sale of votes, secs. 1068-1069 941
  Receiving, etc , returns of pretended election, sec 1006 937
  Stuffing ballot box, etc., sec 1058 938
  Tampering with ballots, etc , sec. 1059 938
  Voting in name of another, sec. 1060 938
  Voting more than once or double tickets, sec 1062 939
For offences under habeas corpus act.
  Refusal to grant or obey writ, sec 1199 980
  Transferring or concealing prisoner, sec 1200 980
  Same, assisting in, sec 1201 981
  Same, additional punishment for, sec 1202 981
For offences under Montana school law
  County superintendent failing to report. sec. 1871 1177
  Disturbing school or school meeting, sec 1916 1191
  How collected and paid over, sec. 1914 1191
  Illegal vote at school election, sec 1880. 1180
  Insulting teacher, sec 1915 1191
  Officers failing to report to superintendent, sec 1903 1188
  School officers' neglect of duty, sec 1911 1191
For offences of officers
  Auditor illegally issuing warrant, sec 1131 961
  Auditor's refusal to settle, sec 124 626
  Charging or taking illegal fees, sec 412, p 141, sec 509, p 194; sec 134 536
  Clerk district court not appointing deputy, sec 198 646
  Clerk failing to tax costs, etc , in criminal cases, sec 420 480
  County commissioners neglecting poor, sec 1624 1090
  County commissioners' neglect of duty, sec 768 847
  County clerk's illegal delivery of warrant, sec 841 868
  County officers neglecting to keep office open, sec 911 886
  Cutting of both ears of animal, sec. 235 569
  Dealing in warrants, etc , secs , 1583, 1584 1079
  District clerk's neglect of duty, sec 1917 1192
  Driving animal off of range, sec 235 569
  Failing to settle and pay over moneys, sec. 970 908
  Failure to settle with auditor, sec. 125 627
  Fraudulent sale by administrator or executor, sec. 220 330
  Grand juror disclosing fact, sec 130 429
  Granting official right for reward, sec 136 536
  Injuries to gas fittings or water pipes, sec 240 571
  Juror failing to attend, sec 1306 1009
  Justice failing to pay over moneys, sec 829 273
  Justice or constable buying judgment, sec 135 536
  Neglect of clerk as to change of venue, sec 235 447
  Not filing mining district records, secs. 1493, 1494 1057
  Officer neglecting duties, sec. 519, p. 498, sec 139 537
  Officer not preventing duel, sec 153 541
  Of notary public, sec 1573 1077
  Of public administrator, sec. 60 414
  Putting out poison within certain limits, sec 213 559

PAGE.

FINES AND PENALTIES
Refusing to deliver to successor, sec 1594 1082
Secretary refusing to furnish copy to printer, sec 1632 1093
Sheriff defrauding prisoner, sec 1273 1001
Sheriff failing to make returns as to prisoner, sec 1274 1001
Sheriff charging illegal fees, sec 864 874
Sheriff's neglect of duty, sec 863 874
Sheriff not admitting attorney to client, sec 114 623
Sheriff or collector buying warrants, sec. 1127 961
Treasurer's neglect, sec 472 732
Treasurer's refusal of examination, etc., sec. 148 632

For Miscellaneous Offenses.
Acting as attorney without license, sec 114 623
Acting as physician without license, sec. 231 567
Aiding or abetting intimidation of workman, sec. 254 575
Allowing swine to run at large, sec. 1998 1215
Attempt to commit offence, sec. 285 584
Butcher failing to record brands and marks, sec. 191 644
Butter, cheese and oleomargarine, secs. 178-180, p. 550, secs. 191-194.... 553
Carrying disease among sheep, sec. 277 582
Contempt of court, secs 591-596. . 212
Contempt of justice's court, sec 816. 271
Constructing insecure public buildings, secs. 248-251.... 574
Constructing or maintaining dangerous dam or reservoir, sec 993.... 916
Corporations obstructing or not repairing road, etc., sec. 1859 1171
Crossing bridge faster than a walk, sec. 232.... 568
Destruction or non-surrender of toll road, sec. 1858. 1171
Digging shaft, drift or drain near highway, sec. 255.... 576
Doing business without license, sec 225 565
Disobeying mandamus, sec. 579... 209
Disobeying notice of fire warden, sec. 1140 963
Disobeying order as to judgment debtor, sec 357. 167
Failure to remove dead animals, sec. 164.... 546
False statement in partnership certificate, sec 1600 1084
Firing guns, pistols, etc in town limits, sec. 228. 566
Forcible entry and detainer, sec. 724. 248
Forgery of signature of territorial auditor, sec. 276 582
Furnishing fire arms etc. to children, sec 195 554
Furnishing liquor to drunkard or minor, sec. 257 577
Furnishing liquor on election day, sec. 258.... 577
Hunting upon another's grounds, sec 247 574
Injury to property of corporations, sec 484 736
Intimidating workman, etc., secs 252, 253 575
Issuing or circulating other than United States or British money, sec. 224.... 565
Jurisdiction of district court, sec. 269 580
Juror failing to attend, sec 1306.. 1009
Killing buffalo or bison, sec 270 .. 580
Leasing house for opium joints, sec. 169 547
Leaving gate of enclosure open, sec. 275.... 582
Making second application for order, sec. 552.... 204

PAGE.

FINES AND PENALTIES
Marking, branding, or driving off another's animals, sec. 235 . 569
Misdemeanor of railroad company, sec. 700 . 818
Neglect of or improper entries in stock book of corporations, sec 471 731
Neglect of witness to conveyance, sec. 252 660
Neglect to repair toll road or bridge, sec 233.. 568
Non-delivery of will to probate court, sec. 8 277
Not entering satisfaction of mortgage, sec. 274 663
Not exceeding ten dollars, limitation of action for, secs. 38-40 . 410
Not repairing ditch crossing on highway, sec 1248 994
Not turning back surplus water of ditch, sec 1239 993
Obscene literature, sec 196 . 554
Offences under common law, sec 278 583
Obliterating lines or notices of lodes, sec. 1482 . 1055
Opium joints, sec 165 . 547
Permitting minor to gamble, sec. 241 572
Preventing lawful diversion of water, sec. 172 .. 548
Purchase of poison under false name, sec. 186 552
Refusal or neglect to produce will, sec. 12 278
Resisting officer by owner of dam or reservoir, sec 990 915
Resorting to opium joints, sec 168 547
Unlawful diversion of water, sec 171 543
Skinning dead animals without consent of owner, sec. 274 581
Stallion or jack running at large, secs. 272, 273 581
Use of animal by stable keeper, sec 271 581
Using branded second-hand packages, sec. 179 . 642
Using brand or mark of another, sec. 174 641
Using weights and measures not standard, sec 2064 1233
Vagrants, secs 243, 244, 246 573
Violating law as to "Lord's Day," secs 1406-1408 1039
Witness failing to attend before officer, sec 655 . 232
Same, neglect or refusal to attend, secs 661, 662 . 233
Witness's or juror's default in forcible entry and detainer, sec. 724 248

FIGURES
May be used for numbers, sec. 526 . 199

FINANCES
Territorial and county, secs 1122, 1127 960

FIRE-ARMS
Furnishing to children, sec 195 554
Firing in town limits punished, sec. 228 566
Selling to hostile Indians, sec. 211 . 559

FIRE COMPANIES.
Property exempt from execution, sec 321 145

FIREMEN.
Exempt from service as jurors, sec. 1305 1009

FIRES
Setting to timber or grass, punished, sec. 221. 561
Started with malicious intent, sec. 222 561
Construction of public buildings as to, secs, 248-251 274

FIRE WARDEN.
Appointment and duties, secs. 1139, 1140 963

PAGE.

FIRE WARDEN
Notice of, effect and disobedience of sec 1140 963

FISCAL YEAR
End of territorial, sec 140 630

FISH
See Game.

FLUMES.
See Ditches, Ditch Companies.

FOLIO
Defined to be 100 words. sec. 1108, p. 954, sec. 1643 1097

FORCIBLE ENTRY AND DETAINER
Damages for, how assessed, sec 365. 159
Proceedings, practice, secs 716-733 246
Defined, sec 716 246
Justice of the peace to have jurisdiction, sec. 717 246
Complaint and summons, sec 718 247
Summons and service thereof, sec 719 247
Return and hearing, jury sec 720 247
Continuance, trial, sec 721 247
Testimony, sec. 722 247
Proof of complainant and defendant, sec. 723 247
When title to land involved, sec 723 247
Judgment, sec. 724 248
When jury fail to agree, sec. 725. 248
Verdict and judgment, sec. 726 248
Treble damages, sec. 726, 248
Unlawful detainer defined, sec 727 248
To whom section 727 does not apply, sec. 728 249
Defaulting juror or witness, sec. 729 249.
Appeals to district court, secs 737, 731 249
Amendments to pleadings, sec 732 249
Evidence, sec 732 249
Rule, etc, relating to trial, applicable sec 733 250
Jurisdiction of justice's courts, sec 735 250
Pleadings in, to be in writing and verified sec 769 259

FORDS
Obstruction of by bridge or ferry, secs 226, 227 565

FORECLOSURE
See Mortgages

FOREIGN CORPORATIONS
To file articles of incorporation or charter, and appoint resident agent, sec 442 720
Consent of agent to act to be filed, sec 443 721
Penalty for failure to comply, sec 444 721
Annual report to be filed, sec 445 723

See Corporations

FORFEITURE
Imposed by statute where tried, sec 57 71

See Fines and Penalties

FORGERY
Of instruments recorded, etc, sec 114 530
Of signature of territorial auditor sec 276 582
Of name of judge or attorney to license, sec 111 622
Proof of existence of corporations in cases of, sec 104 526

FORGERY
Experts as witnesses in trials for, sec 165 526
Of official seals, sec 106 526
Defined and punished, sec 96 523
Stamps and labels, sec 99 523
Promissory notes and bills, sec 101 525
Bank bills, checks, etc, sec 102 525

See Counterfeiting

FORM.
Of civil action, sec 1 95
Of pleadings, sec. 82 79
Of oath discharging prisoner in civil action, sec 151 95
Oath of trial jury, sec 256 123
Of exceptions, sec 292 133
Of judgment docket, sec 308 139
Of execution book, sec. 315 143
Of notice of sheriff's sale, sec. 332 149
Of register of actions, sec 534 201
Of certificate to copy of record, sec 542 202
Of affirmation of witness, sec 695 241
Letters testamentary, sec. 52 288
Letters of administration with will annexed, sec 53 289
Letters of administration, sec. 54 289
Of magistrate's endorsement on complaint in criminal action, secs. 115, 116 425
Recognizance of defendant, sec. 115 425
Bills of exceptions to be reduced to, sec 294 134
Oath of grand jury, sec. 126 429
Order of magistrate holding defendant, sec 116 425
Endorsement on indictment, sec. 150 432
Pleadings in criminal actions, secs. 162-192 435
Letters of guardianship, sec. 358 363
Acknowledgment of conveyance, secs 242-257 658
Resolution of trustees organizing society, sec 671 805
Bond of county clerk, sec 829 865
General index of recorder, sec 834 866
Recording book, sec 836 867
Bond of sheriff, sec 850. 872
Oath of coroner's jury, sec 870 876
Verdict of same, sec. 874 876
Bond of county treasurer, sec 885 879
Notice of election, sec. 1013 925
Oath of judge or clerk of election, sec. 1015 925
Oath of challenged voter, sec 1021 926
Election return, sec 1030 929
Poll books and oath of election officers, sec. 1054 936
Oath official taken by all officers appointed or elected, sec. 1067 939
Of territorial warrants, sec. 1125 960
Of oath of commissioner of insane, sec. 1207 983
Declaration of occupancy, sec. 1661 1103

FORNICATION.
Defined and punished, sec 161. 545

FOURTH OF JULY.
Judicial business prohibited, sec 531 199

FRANCHISE.
When may be taken for public use, sec 600 215

See Usurpation of Office, Eminent Domain

FRAUD
Limitation of action for, sec 42, p 69, sec 746 254
When arrest allowed for, sec 121 90
Fraudulent acts punished, sec. 197. 555
Interfering with workman by, sec. 252 575

PAGE.

FRAUD.
  Vitiates conveyances and contracts, secs. 212, 213 651
  Member of board or commission punished for, sec 268 580
  See Conveyances and Contracts.

FREE PUBLIC LIBRARIES, secs 1141, 1142 964

FUGITIVE FROM JUSTICE.
  Requisition for, sec. 449 487
  Expenses for same, sec. 450 487
  Reward for apprehension of, how paid, sec. 460 488

FUNDING INDEBTEDNESS.
  Concerning, secs. 786-793 854

  See County Finances.

GALLATIN COUNTY.
  Creating and defining boundaries, sec 737 836

GAMBLING.
  At certain games punished, sec 206 537
  Owner of place in which permitted to be punished, sec 210 559
  Permitting minors to gamble, penalty for, sec 241 572

  See License.

  Room to be designated, sec 206 557
  Doors to room to remain unlocked, sec. 207 558
  Certain games prohibited, sec. 208 558
  Fines, how paid, sec. 209 558

GAME.
  Penalty for killing large game out of season, sec. 1143 965
  Penalty for killing at any time for hide and head, sec 1144 966
  Penalty for hunting with dogs at any time, sec. 1145 966
  Penalty for killing certain fur-bearing animals out of season, sec 1446 966
  Penalty for killing certain birds out of season, sec. 1147 966
  Unlawful killing of wild geese and ducks, sec. 1148 967
  Penalty for killing wild singing birds, sec. 1149 967
  Destroying nests or eggs of singing birds prohibited, sec 1150 967
  Possession of dead bodies of animals or birds evidence of the killing, sec. 1151 967
  What constitutes a fishing tackle—Where seine may be used—Drugs, sec. 1152 967
  Transportation or sale of illegally captured fish prohibited, sec 1153 968
  Disposition of fines collected under this chapter, sec. 1154 968
  Duties of courts and grand juries, sec 1155 969
  Sawdust to be prevented from mingling with water of streams, sec 1156 969
  Protection of quail, sec 1157 969
  Removal of obstructions from Pon d' Oreille river, sec. 1158 970

  See Bounty.

GARNISHEE
  Liability of, sec. 189 106
  Examination of, sec. 190 107

  See Execution, Judgment

GARNISHMENT.
  Writ of, how served, sec 188 106
  Liability of garnishee, sec. 189 106
  Examination of garnishee, sec. 190 107

PAGE.

GAS FITTINGS
  Penalty for injury to, sec. 240 571

GENDER
  Words in masculine to include feminine, sec 539 201

GIFT.
  In contemplation of death, etc , sec 519 393
  When declared an advancement, sec 546 399

GOODS.
  See Personal Property.

GOOD TEMPLERS—
  See Corporations

GOLD COIN
  Penalty for counterfeiting, secs 107-108 527
  Having counterfeit in possession, sec 167 527
  Having dies for counterfeiting, sec 107 527

GOLD DUST
  How disposed of on execution, sec 319 144
  Counterfeiting, sec 108 527
  Having same in possession, sec 108 527
  Weighing with false weights, sec 204 557
  Market value of to be measure of damages, sec 211 650
  Contracts payable in, how valued, sec 1393 1034

GOVERNOR
  Auditor's office open to inspection of, sec 125 627
  Auditor to furnish information to, sec 770 848
  Duties and powers as to arsenals, arms, etc , secs 89-101 616
  Duties in relation to stock interests. See Animals
  Duty in case of pregnant convict, secs 385, 386 474
  Entitled to copy of supreme court reports, 1995 1215

  See Printing

  May appoint commissioners of deeds, sec 199 646
  May appoint notaries public, sec 1560 1075
  May contract for keeping convicts sec 288 667
  May direct action for usurpation of office, sec 411 171
  May fill vacancy in office, secs 1048-1049 935
  May give notice to judges, sec 295 669
  May offer reward for escaped convict, sec 284 584
  May make contract with another state for care of convicts, sec 291 668
  May offer reward for escaped prisoners, sec 459 488
  May order execution, or commute sentence, secs. 383-386 473
  May order force of territory to aid officer, sec 17 406
  May prolong time or suspend execution, sec. 379 473
  May restore civil rights to convict, sec 280 583
  Officer in charge of pententiary to report to, sec. 290 667
  Power and duties as to deaf, mute and blind children, secs 944-996 917
  Power concerning fugitives, sec 149 487
  Power respecting pardons. sec 461 489
  Resignation of member of legislature addressed to, sec 1319 1013
  Resignations made to, sec 1045 934

PAGE.

GOVERNOR
Respite by, of person sentenced to death, sec 337 472
Superintendent of public instruction to report to, sec 1861 1174
Duties as to same, sec 1861 1174
To appoint territorial board of arbitration, sec 82 614
To canvass votes, give certificate, or order new election, sec. 1034. 931
To appoint visiting physician for penitentiary and insane asylum, sec 3061 671
To certify accounts for keeping convicts, sec 290 667
To certify expenses of arresting fugitives sec 450, page 487, sec 460 488
To contract for expenses of indigent insane, sec 1323 1014
To direct probate judge to hold court in neighboring county, when, sec 4 275
To examine books of treasurer, sec. 142 630
To fill vacancies in territorial offices, sec. 1590 1081
To issue writ of election in such case, sec. 1320 1013
To order election for member of the legislature, when, section 1036 932
To remove insane from territory, when, sec 1224. 987
To remove treasurer, when, sec 144 631
Treasurer's office, open to inspection, sec 131 628

See Printing.
See Militia.

GRAIN
See Toll for Grinding Grain.

GRAND JURORS.
Challenge of, secs 120-125 428
Duties and charge to, as to persons exhibiting weapons, sec. 65 520

See Jurors, Grand Jury.

GRAND JURY
Secs 117-164. 427
Cause for challenge, sec 119 427
Causes of challenge to juror, sec 120 428
Challenge for corruption in selecting, sec 453 488
Challenge to, sec 118 427
Charge to, sec 127 429
Charge to, as to killing buffalo, sec 270 580
Clerk of and his duties, sec 133 430
Contempt of witnesses before, sec 140 431
Court to appoint foreman, sec 117 427
Duty of foreman, secs 150-151 432
Effect as to one, secs 124-125 428
Effect of challenge to panel, sec 123 428
Evidence before, secs 145-146 431
Foreman may administer oaths, sec 132 430
How summoned and empanelled, sec. 142 431
Indictment, sec 444 431
Indictment, how signed and endorsed, sec 156 433
Indorsement of indictment, secs 150-154 432
Law relating to disclosures given in special charge, sec. 131 430
Members of, when required to testify, sec. 128 429
Members of to inform jury of offences, sec 148 432
Number composing, sec. 117 427
Oath of, sec. 126 429
Penalty for disclosing, sec 130 429
Power and duty of, sec. 143 431
Presentation not necessary to present indictment, sec 155 433
Presentment of indictment, sec 152 432

GRAND JURY.
Requisite number to indict, sec. 150 432
Right of party in custody, secs 121-122 428
Rights and duties of prosecuting attorney concerning, secs. 134-136 430
To be provided with act concerning offences, etc , sec 65 512
To certify when prosecution to pay costs, sec 410 479
Venire for special grand jury, sec. 141 431
What members may not disclose, secs 129-130 429
What to inquire into, sec 149 432
When indictment not preferred, sec 153 432
When to find indictment, sec 147 432
Witnesses before, secs 136-138 430

See Jurors

GRAND LARCENY.
See Larceny

GRANGES
See Corporations.

GRANTEE
See Conveyance

GRANTOR
See Conveyance

GRASS
Setting fire to, secs 221-222. 562

GUARD
Aiding escape of convict, penalty for sec 123 533

GUARDIAN
Account and settlement of, sec 373 367
Action against and liability for waste, sec 362 159
Application of civil practice act to, sec 408 375
Application of proceeds of sale, sec 378 368
Appointment of, sec. 351. 362
Appointment of, for non-resident, sec 392 371
Appointment of guardian of insane or incompetent person, secs 364, 365 365
Appointment of, as provided in civil code, sec 416 376
Bond and conditions thereof, sec 358, 363
Bond of, sec 394 371
Bond of, how penalty payable, sec. 94. 296
Bond to be filed, sec 403 374
Causes for removal, sec 426. 377
Considerations to govern, sec. 419. 376
Costs, how awarded, sec 385 369
Court may appoint more than one, and bond of, etc , sec 406 374
Court may control, sec 424 377
Defined, secs 409-413 376
Discharge of persons in possession, sec 398 573
Duties and powers of, sec. 421. 377
Duty as to management of estate, education, and support of ward, secs 369, 370 366
Duty of, as to property of ward, sec 422 377
Examination of persons suspected of defrauding wards, sec 399 373
Examination of witnesses, sec 384 369
Expenses and compensation, sec. 375 368
Extent of, sec 395 371
Father or mother entitled to, sec 355 363
For infant, when a party to suit, sec. 9 71

PAGE.

GUARDIAN
- Same, how and when appointed, sec. 10.. 61
- For non-resident having property, sec. 417 376
- Give bond before sale, sec 387 370
- Guardian ad litem, sec. 363 365
- Guardianship, how terminated, sec. 401... 374
- Has power over person and property, sec. 420.... 377
- Hearing of application, sec. 383 369
- In justice's courts, sec. 741... 252
- Insulting teacher in presence of school, sec. 1915. 1191
- Inventory and appraisement, return and record of, sec. 372 367
- Investment of proceeds, sec 379..... 368
- Investment of proceeds of sale, sec. 391. 370
- Judge may insert conditions in order of appointment, sec. 359 364
- Letters and bond to be issued and recorded, and form of, sec. 360 364
- Letters revoked for contempt, sec 331 356
- Limitations for recovery of property sold, sec. 405. 374
- Limitations of action on bond, sec 404 374
- Limitation of order of sale, sec 383 369
- Maintenance of, how paid, sec. 361 364
- May contest will, sec 17 279
- May maintain action for injury to ward
- Minor having guardian may select, when, sec. 354.... 363
- No person has power except by appointment, sec. 415 376
- Not to purchase at sale in partition, sec. 408 170
- Of account of joint guardians, sec 374 368
- Of removal and resignation of, sec. 400....... 373
- Order appointing may be appealed from, sec. 475 181
- Order of court for sale, secs 377-379 368
- Order to show cause, sec. 381 368
- Petition for order of sale, sec 380. 368
- Power of probate court over, sec. 1 274
- Powers and duties of, sec 393 71
- Powers and duties of and discharge, sec 366.. 365
- Powers of court at chambers, sec. 407 375
- Powers of surviving, sec 425.... 377
- Proceedings to remove property out of territory, secs 396-397 371
- Process against minor served on, sec. 744 253
- Provisions of civil practice act apply to, sec. 324. 354
- Relation of to ward, sec. 423 377
- Seal of court necessary to appointment of, sec. 5 275
- Served with process for ward, sec 72 76
- Served with order to show cause for sale of real estate, sec 189 322
- Service of order, sec. 382 369
- Service upon and appearance for ward, sec. 332 356
- Settle accounts and collect debts due ward, sec. 368 366
- Suit for seduction of ward, sec. 12 61
- Terms of sale, sec. 390. 370
- Testamentary guardians, sec. 362 365
- To be cited in petition to contest will, sec. 31 282
- To be party to suit under law for enforcing liens, sec 1380 1032
- To have custody and tuition of minor and management of estate, secs 356, 357 363
- To have notice of partition, sec. 295. 345
- To pay debts of ward out of estate and proceedings to sell real estate, sec. 367 366
- To represent stock of ward in corporations, secs 464, 465 729

PAGE.

GUARDIAN.
- Ward of unsound mind may be placed in asylum, sec. 431 378
- *What court has jurisdiction*, sec 418 376
- What order shall specify, sec. 386 369
- What provision govern, sec 388 370
- When entitled to release, sec 430 378
- When estate of ward may be sold, sec. 376 368
- When judge may appoint for minor, sec. 353 363
- When may assent to partition, sec. 371 367
- When may be appointed by will or deed, sec. 414 376
- When minor may nominate, sec 352 363
- When new bond required, sec 402 374
- When power of superseded or suspended, secs. 427, 428 378
- When ward may settle, sec. 429. 378

GUARDIANSHIP
- Powers of probate court as to, sec. 707 244
- How terminated, sec. 401 374
  - See Guardian.

GUILTY
- Plea of may be entered and how, secs. 218-219 444

HABEAS CORPUS
- Person authorized to grant, may admit to bail, sec. 240 449
- To bring criminal before court, sec 387 474
- Warrant after hearing, sec 388 474
- When issued for criminal, and proceedings under, secs. 387-388 474
- Who may prosecute, sec 1164 974
- Application, how made, and allegations of, sec 1165 974
- Writ of, by whom and when granted, secs 1166-1167 975
- Same, to whom directed, and requisites of, sec. 1168 975
- To whom and when delivered, secs 1169, I170 975
- How served, secs 1170, 1171 975
- Proceedings if writ disobeyed, sec 1172 975
- Return of writ, sec 1173 976
- When body of prisoner to be brought, secs 1174-1176 976
- Duties of judge and proceedings on return and hearing, secs. 1177-1179.. 977
- Privileges of prisoner, sec. 1178 977
- Power of judge on hearing, sec. 1180 977
- Prisoner, when to be discharged, sec. 1181 977
- Same, legally held to be remanded, sec. 1182 977
- Same, on legal process, when to be discharged, sec 1188 977
- Not discharged for defect in warrant, sec. 1184 978
- When judge to examine, discharge, or hold to bail, sec 1185 978
- Prisoner entitled to writ to procure bail, sec. 1186 978
- Prisoner entitled to bail, recognizance of, sec 1187 979
- If not entitled to discharge and not bailed, to be remanded, sec 1188 979
- May be permitted to person entitled to custody, sec 1189 979
- Same, pending judgment, sec 1190 979
- Writ not disobeyed for defect of form, sec 1191 979
- Prisoner discharged not re-imprisoned, sec 1192 979
- When warrant issued returnable forthwith, sec. 1193 979
- Person detaining may be apprehended, sec. 1194 980
- How warrant to be executed, sec 1195 980
- Manner of returning warrant, and proceedings under, sec 1197 980

PAGE.

HABEAS CORPUS
- Warrants, process, etc , how and by whom issued, sec 1198 980
- Penalty for refusal to grant or obey writ, sec 1199 . 980
- Transfer or concealing prisoner, sec 1200. 980
- Assisting in same, sec 1201 . 981
- Additional punishment for violation of this act, sec. 1202 981

HALF BLOOD
- Inheritance by, sec 543 . 398

HALF BREED INDIANS
- Furnishing liquor to, punished, sec 160. . . 544

HANDWRITING
- Evidence of in proving will, sec 23 281
- Proof of in conveyances, sec 250 659

HANGING
- Punishment by for murder, sec 25 505
- Manner of inflicting, sec 376 . 472

HARD LABOR
- Sentence of, sec. 472 . 491

HEAD OF FAMILY
- See Homestead
- See Exemption

HEALTH
- See Nuisance

HEARING
- Of original suit, sec. 252 . 121
- Of case on appeal, sec. 442 179
- Of charge of contempt, sec 590 212
- Upon arrest for threatening offence, sec 23 . . 407
- See Trial.

HE-GOAT
- When not to run at large, secs. 76-78 61[illegible]

HEIRS.
- May maintain action for causing death, sec 14.. 62
- May object to administrator's bond, sec 84. . . 294
- Notice of petition for sale of land to be served on, sec. 189 . 322
- Contest by, of administrator's account, sec. 268 . . . 341
- Distribution of estate to, secs. 280-296.. 343
- Property devised to societies, etc , to go to, when, sec. 473 386
- Term defined, secs. 486-491 . 388
- Term not necessary to convey fee simple, sec. 578 664
- See Conveyances.
- See Licenses.

HERDERS
- Lien of for keeping animals, sec 1394 1035

HIGHWAYS
- Damages for cutting timber on, sec. 363 159

HISTORICAL SOCIETY.
- Annual appropriation for the Montana historical society, sec 1512 . 1062
- Duties of officers, reports, etc , 1513 1062
- Appropriation for printing reports, sec 1514 1063

HOG
- See Animals

HOGS.
- See Swine.

PAGE.

HOLIDAYS
- Judicial business prohibited, sec 531 199

HOMESTEAD
- Action concerning, wife may sue alone, sec 7 61
- Value of, exempt from execution, sec 322 . . . 147
- What included in, sec. 322 . 147
- Not affect certain liens, sec. 322 . . 147
- Selections of, secs. 324, 325 . . 147
- Proceedings if plaintiff dissatisfied, sec 325 . . 147
- Exemption after death of owner, sec 327 148
- Removal not to affect, sec. 328 148
- Right of widow to, sec. 329 .. 148
- To whom right applies, sec. 330 .. 148
- Family of decedent entitled to, and how set apart, secs, 133, 134 . 305
- Rights of widow and children in, secs. 133-146 305
- How selected and vested in, secs. 140-146 307
- Heirs to have notice of the petition to set apart, sec. 328 355
- Decree setting apart, record of, sec 329 . . 355
- See Exemption.

HOMICIDE.
- Justifiable, defined, secs 32-38...... . 506
- Bare fear of injury insufficient, sec 33 507
- What must appear to make it justifiable, sec. 34 507
- By officer, sec 35 507
- Unavoidable necessity, sec 36 . 507
- Excusable, defined, secs. 37, 38 507
- Acquittal and discharge, sec 39 508
- Burden of proof, sec 40 508

HORSE
- See Animals.

HOTEL KEEPER.
- To post notice of use of oleomargarine, sec 192 553

HOUSE.
- Exempt from execution, sec. 326 148
- Officer may break open to arrest criminal, sec 452 487
- Gaming, minor prohibited from playing in, sec 241.. . .. 572
- Same, not kept open on Sunday, sec. 1407 1039

HUNTING.
- Upon another's ground, without consent, punished, sec 247 . 574

HURDY GURDY HOUSE.
- Not kept open on Sunday, sec 157 p. 533, sec. 1406 1039
- Unlawful to keep, sec. 256. 576

HUSBAND.
- When not to testify against wife, sec 650. . .. 230
- Of administration by, sec, 55 ... 289
- Inheritance by, sec 534 .. . 395
- Same, limited, sec 550 399
- Coercing wife to commit crime, secs. 6, 7 501
- Absence of in case of bigamy, sec. 155 543
- When not responsible for debts of wife, sec. 1438 . 1045
- Letters of administration to be granted to, secs. 70-73 292
- See Wife

HUSBAND AND WIFE.
- May convey real estate jointly, sec. 236 656

PAGE.

IDIOT.
Incapable of committing crime, sec. 3. 500

ILLEGITIMATE CHILD.
Of whom declared to be an heir, sec 536 397
To whom estate descends, secs. 537 . 397

IMPEACHMENT.
Of territorial officer, secs 41-62 412
Council to try, sec. 43 412
Articles of and delivered to whom, sec 43 412
Hearing, sec. 44 412
Service of notice, sec. 45 412
Default, sec. 46 412
Answer of defendant, sec. 47 412
Pleadings, sec 48 412
Objections to sufficiency of articles, sec. 49 412
Counsel, sec. 50 413
To be sworn, sec 51 413
Trial and adjournments, sec 52 413
Two-thirds to convict, sec 53 413
Judgment, secs 54-57 413
Temporary suspension of defendant, sec. 58 414
Indictment, sec 59 414
Penalty, sec 60 414
Of county officers, sec 61 414
Of district attorneys, sec. 62 415

IMPLIED PROMISE
Limitation of action, sec. 44 69
See Express Promise, Promise

IMPOTENCY.
Cause for divorce, sec 999 919

IMPRISONMENT
Bail exonerated by, when, sec. 133 93
For contempt, when allowed. sec. 587 212
Justice may punish contempt by, sec 816 271
Of defendant exonerates bail, sec. 338. 465
Warrant for, sec 524 498
For debt, prohibited, sec 1203 981

IMPROVEMENTS.
When allowed as set off, sec. 369 160
On lands subject to execution, sec. 1659 1102
Sale of, consideration for promise, sec. 1659 1102
See liens

INCEST
Punished, sec. 161 545
Incestuous marriages, sec. 161 545

INCUMBRANCER.
Rights of, when impaired by will, sec. 516 393

INCUMBRANCES.
See Liens

INDEX
To justice's docket to be kept, sec. 807 270
Recorder to keep general and form of, sec. 835 866
To book of plats, sec 837 867
Of each volume of records, sec 838 867
Of liens to be kept by recorder, sec. 1373 1030

INDIANS.
Kidnapping of, secs 51-54 510
Penalty for selling liquor to, sec. 160. 544
Special charge to grand jury as to, sec 160 544
Furnishing hostiles with arms and ammunition, sec. 211 559

PAGE.

INDICTMENT
Against accessory before the fact, sec. 176 437
Allegation concerning property of joint owners, sec 185 438
Against person not in custody, inspection of. sec. 180, 437
Against several defendants, defect of, sec 175 437
After the fact sec. 177 437
Chapter concerning, secs 161-192 192
Counts for murder and manslaughter, sec. 184 438
Causes for, which set aside, secs 206-208 442
Contents of, sec. 164 435
Construction of words, sec 168 435
Conviction or acquittal a bar, sec. 225 444
Defined, sec. 144 431
Different counts, sec. 188 488
Defendant may demur, when, sec 212 443
Disclosure of before arrest, penalty, sec. 181 437
Duties of clerk on transfer to another county, sec 321 463
Erroneous allegations as to person injured, sec 189 438
Endorsement of, secs 150, 151-154 432
Effect of sustaining demurrer, sec. 214 443
Forcible, what sufficient, sec 190 438
Fictitious name, sec. 187 438
For offence of different degrees, effect of, sec. 182 438
For perjury or subornation of, sec 192 439
Grand juror not to disclose, sec, 130 428
If demurrer overruled, defendant to plead, sec. 216 443
In pleading a *judgment*, *sec*. 173 436
Joint owners, how named, sec. 167 435
Loss or destruction of, sec 179 437
Must be direct and certain, sec. 165 435
Misdescription of destroyed instrument immaterial, sec 191 439
Not barred by proceedings for contempt, sec 593 213
Not barred by impeachment, sec 59 414
Names of witnesses endorsed, sec 157 433
Not quashed for immaterial defects, sec 171 436
Of county officers, sec. 61 414
Of officers impeached, sec. 59 414
Order of arrest on filing, sec 158 433
Other requisites of, sec 156 433
Presentment and filing of. sec 152 432
Prosecution in district court, sec 5. 404
Pleading on part of prosecution, sec 163 435
Pleading private statute, sec 174 436
Record and copy, how made and effect of, sec 178 437
Time allowed defendant to plead, sec 204 441
Time of offence, how stated, sec 166 435
Time pending when not computed in limitation, sec. 462 489
When demurrer deemed available, sec 217 443
When defendant admitted to bail, sec 243 449
When found, sec 147 432
When found against accessory, sec 186 438
What need not be stated, secs. 171-172 436
When not preferred, sec 153 432
When may be demurred to, sec. 205 442
When sufficient, sec 170 435
Words of statute, when not to be strictly pursued, sec 169 435
See Contempt, Grand Jury

INDORSERS
See Bills of Exchange and Promissory Notes

PAGE.

INFAMOUS CRIME
- Punishment of, sec. 50 510
- Cause for divorce, sec 999 919

INFANT
- When party to appeal by guardian, sec 9 61
- Appointment of guardian for, sec 10 61
- Statute of limitations affecting, sec 39 67
- Guardian not to purchase real estate of, in partition, sec 408 170
- Appointment of guardian in justice's court, sec. 741 252
- How may sue or be sued in same, sec 741 252
- Cannot be administrator, sec 59 290
- How served with process in probate court, sec 332 356
- Guardian may consent to partition for, sec 371 367
- Investment of proceeds of sale for, sec 379 368
- Appointment and duties of guardian for, secs 409-431 376
- Inheritance by, secs 532-557 395
- When another person liable for offences of, sec 5 501
- When deemed incapable of committing crime, sec 4 500
- See Guardian
- See Minor

INFANTS
- When declared of lawful age, sec 1204 981
- See Homestead
- See Minors

INHUMANITY
- To prisoner, how punished, sec 115 530

INJURY
- To child or ward, sec 13 62
- Causing death of adult, action for, sec 14 62
- To property, limitation of action, sec 42. 69
- When person may be arrested for, in civil action, sec 121 90
- To person or property by boats, sec. 206 111
- To property in litigation, while surveying, sec 370 161
- To property during foreclosure, restrained, sec 372 161
- When purchaser under execution may recover damages, sec. 373 161
- Threatening letter, sec. 187 536
- Malicious to property, secs 161-222 545
- Same, to animals, sec 215 560

INJUNCTION
- Stops statute of limitations, sec 52 70
- Defined, and by whom granted, sec 172 100
- Cases in which granted, sec 173 100
- When granted, secs. 173, 174 100
- How served, sec 174 101
- When not allowed, sec. 175 101
- Undertaking, requirements as to, etc sec. 176 101
- Hearing defendant before granting. sec. 177 102
- To suspend business of corporation, sec 178 102
- Motion to dissolve or modify, sec 179 102
- When vacated or modified, sec 180 102
- Dissolution of, sec 180 101
- Against nuisance, sec 361 159
- Against party in possession, sec. 372 161
- When order in regard to may, be appeal, sec 421 174
- See District Court.

PAGE.

INNOCENT PERSON.
- Death caused by perjury, sec. 110 529

INOCULATING
- Contagious disease, penalty for, sec 223 562

INQUEST
- See Coroner

INSANE
- Appointment, duties and discharge of guardian for, secs 364-366 365
- Appropriation for, sec 1223 987
- Board of commissioners for, how elected, sec 1205 983
- Same, term of office, sec 1206 983
- Certificate and payment of amount due for maintenance, sec 1213 985
- Commissioners, fees of, sec 1218 986
- Same, to certify expenses to auditor, sec 1219 986
- Commissioners, report of, and vacancies, how filled, sec 1222 987
- Commissioners to inspect, sec 1212 984
- Counseling to crime, punished, sec. 5 501
- Contracts, in what name and by whom executed, sec 1209 984
- Convict, proceedings in regard to, secs 312-314 673
- Convict sentenced to death, secs 380-383 473
- Contract, requisites of, and notice to be filed, sec 1214 985
- Duties of secretary, sec 1209 984
- Expense of keeping, sec 469 490
- Guardian for may be appointed, secs 416-417 376
- Guardianship of, how terminated, sec 401 374
- How summoned in justice's court, sec 744 253
- How served with process in probate court, sec 332 356
- Inquisition and suspension of execution, sec 382 473
- Inquisition before sentence, sec 393 475
- Indigent, contract for expenses of, sec 1225 987
- Incapable of committing crime, secs 2-3 500
- Inquisition transmitted to governor, sec 383 473
- Judgment not to be entered against, sec 392 475
- Jury summoned, sec 380 473
- Not allowed to testify, sec 649 230
- Notice to, oath and bond of, sec 1207 983
- Same, to meet, organize and appoint secretary, sec 1208 983
- Prosecuting attorney to attend, sec 381 473
- Powers and duties of commissioners, secs 1216 1223 984
- Proposals canvassed and contracts let, sec 1211 984
- Person incapable of making will, sec 433 380
- Proceedings if defendant alleges insanity before arraignment, sec 466 490
- Person not to be tried for offence, sec 465 489
- Person, not entitled to vote, sec 1008 923
- Proceedings necessary for trial and removal of, sec 1215 985
- Proceedings on finding of jury as to sanity, sec 467 490
- Procedure on recovery of reason, see 468 490
- Rules for custody, maintenance and treatment, how made and published, sec 1210 984
- Same, contracts for and bond, sec. 1210 984
- Removal of, from territory, sec. 1224 987
- Suit for property and maintenance, sec 1217 986

PAGE.

INSANE
- Statute of limitations affecting, sec 39 . . . 67
- Service of summons upon, sec 72 . . . 76
- When contract annulled and liability thereon, sec. 1216 . . . 986
- See Guardian, Witnesses.
- All insane patients to be supported at the expense of the territory, sec. 1226 . . . 988
- Governor to direct discharge inmate upon report of visiting physician, sec. 1227 . . . 989
- Money and clothing furnished to discharged inmate, sec. 1228 . . . 989
- When act takes effect, sec. 1229 . . . 989
- Inmate may choose confidential correspondent, sec 1230 . . . 989
- Duty of superintendent as to correspondent, sec. 1231 . . . 990
- Penalty for violation, sec. 1232 . . . 990
- Printed copy of law to be posted in asylum, sec 1233 . . . 991
- Conflicting laws repealed, sec. 1234 . . . 991
- When takes effect, sec. 1235 . . . 991

INSANE ASYLUM
- To be visited by physician, sec. 306 . . . 671
- Compensation of physician, sec. 307. . . . 672

INSANITY.
- Of guardian terminates guardianship, sec. 400 . . . 373
- See Defendant, Judgment, Trial, Insane.

INSOLVENT.
- Corporation receiver may be appointed for, sec 229 . . . 115
- Estate, proceedings for sale of, sec 175 . . . 319
  - Administrator may compound with debtor, sec. 232 . . . 332
  - Decedent, payment of debts of, sec 275 . . . 342
  - Guardian may be removed, sec. 426 . . . 377

INSOLVENT DEBTOR.
- See Arrest and Bail.

INSPECTION
- Of written instrument, sec. 99 . . . 85
- Order for of mining claim, sec. 376 . . . 162
- All papers, etc., order for, sec. 553. . . . 204

INSPECTOR OF WEIGHTS AND MEASURES.
- Appointment of, sec. 2061 . . . 1233
- Bond of, sec. 2061. . . . 1233
- Fees of, sec. 2062. . . . 1233
- Duties of, secs 2063-2066 . . . 1233

INSTITUTIONS OF LEARNING.
- Who may incorporate, sec 619 . . . 793
- Declaration, how made, sec 620. . . . 793
- What declaration shall set forth, sec. 621 . . . 793
- Term of office of trustees, sec, 622. . . . 793
- Number of trustees increased or diminished, sec. 623 . . . 793
- Religious societies may incorporate as institutions of learning, sec 624 . . . 793
- Powers of the corporation, sec 625 . . . 793
- Right of succession, sec. 626 . . . 794
- May confer literary honors, sec 627. . . . 794
- Privileges conferred by diploma, sec. 628 . . . 794
- See Corporations.

INSTRUCTIONS TO JURY.
- In civil actions, sec. 262. . . . 125
- Exceptions to, to grand jury, sec. 262 . . . 125
- In criminal action, sec. 307, p 461, secs. 326-328. . . . 564
- See Trial.

INSTRUMENT OF WRITING
- When admitted genuine in pleading, sec 97 . . . 84
- Costs of several actions in one, sec 496 . . . 192
- How sued in justice's court, sec. 740 . . . 252
- Interest on, secs 1237, 1238 . . . 987
- Effectual without seal, sec 1963 . . . 1206
- See Actions Civil, Conveyances

INSURANCE COMPANIES.
- Notice given of intention to organize, sec 564 . . . 766
- Certificate of incorporation to be recorded, sec. 565 . . . 767
- Minimum amount of capital allowed sec 566 . . . 767
- Books for subscription to capital stock, opened, sec 567 . . . 768
- Number of directors, sec 568 . . . 768
- Manner of investing surplus funds, sec 569. . . . 769
- Examination of the affairs of the company, sec 570 . . . 769
- Powers of the company, sec 571 . . . 770
- Election of directors, sec 572 . . . 771
- How president chosen, sec. 573 . . . 771
- Secretary and other officers, sec. 574. . . . 772
- Policies of insurance or contracts, sec 575 . . . 772
- Transfer of stock, sec 576. . . . 772
- Increase of capital stock, sec 577 . . . 772
- Dividends and profits, sec. 578 . . . 772
- Real estate; acquiring limited, sec 579 . . . 773
- Liability on notes given for capital stock, sec 580 . . . 774
- Assessments to pay loss or damage, sec. 581 . . . 774
- Name or title of company, sec. 582 . . . 775
- Annual statement, sec 583 . . . 775
- Auditor may demand report at any time, sec. 584 . . . 777
- What statement shall show, sec 585. . . . 777
- Foreign insurance companies, sec 586 . . . 777
- Certificate of authority to transact business, sec 587 . . . 778
- Annual statement of financial condition, sec 588 . . . 778
- Agents of foreign insurance companies, sec. 589 . . . 779
- All foreign insurance companies to conform to this chapter, sec. 590 . . . 779
- Auditor's duties, sec 591 . . . 779
- Deficiency in capital stock to be made good. sec 592 . . . 780
- Deficiency in mutual companies, sec. 593 . . . 781
- Certificate of authority may be revoked, sec. 594 . . . 781
- Fees of territory and auditor, sec 595 . . . 782
- Deposites for security of policies regulated, sec 596 . . . 782
- Certificate of compliance with law to be published, sec. 597 . . . 783
- Expenses of examination to be paid, sec 598 . . . 783
- Printed forms to be furnished by the auditor, sec 599 . . . 783
- Taxes to be assessed upon insurance companies, sec 600. . . . 783
- Mutual companies not to transact business on the stock company plan, or stock company on the mutual plan, sec. 601 . . . 784
- Mutual benefit companies not prohibited by this chapter, sec 602 . . . 784
- See Life Insurance Companies.

INTELLIGENCE OFFICE.
- See Licenses

INTENT.
- Union of act and intention, sec 1. . . . 500

PAGE

INTENT
Necessary ingredients of crime, secs 1-9 500
When manifested, sec. 2 500
When deliberate, secs 19, 20 505
To procure miscarriage, sec 42 508
To cause death by poison, sec 44 509
To take person from territory, sec 54 510
To detain and conceal child, sec 56 511
To abandon child, sec 57 511
Assault with, etc , secs 59, 60 511
To extort money, sec 64 512
Arson committed with, secs. 69-72 514
Marking, etc., animals with intent to steal, sec 86 519
Burglary committed with, secs. 73, 74 515
Having burglar's tools with, sec 174 549
To injure, defraud or cheat proven, sec 283 584
Of legislature, sec 631 525

INTENTION
Of testator, how ascertained, sec. 475 388
Of parties to contract, sec 636 226
Who incapable of forming, sec 3 500

See Written Instruments

INTEREST
Transfer of not to abate action, sec 22 63
Payment of, effect on limitation of action, sec 54 70
In real estate, how determined, sec 366 160
Of parties in partition, how set forth, secs 378-383 164
Of decedent set forth in inventory, sec 120 301
On legacies, when to commence, sec 521 393
On territorial warrants, sec 1129 961
Legal rate of ten per cent , secs 1236-1238 991
On bills, bonds, notes, judgments and money, sec 1237 991
Rate greater than ten per cent may be stipulated, sec 1238 991
Construction of words, sec. 1238 991

INTERROGATORIES
See Depositions, Evidence

INTERPLEAD
See Intervention

INTERPRETATION
Of a writing, sec 629 225
Of a statute, secs 630, 631 225
Of wills, secs 474-508 387

See Written Instruments

INTERPRETER.
When may be sworn, summoned, fees and contempt of, sec. 653 231

See Witnesses

INTERVENTION
When party may intervene, sec. 24 64
Defined and process for, sec 24 64

See Interplead

INTESTATE
Administration of estates of, sec 274 402
Debts due to by administrator, sec 122 302
Contract of enforced, secs 236-246 334
Stranger dying, public administrator to be notified, sec. 335 357
Property of chargeable with debts, sec 316 392
Descent of estate, secs 531-557 395
Leaving no heir, property escheats, sec 535 397

INTIMIDATION
Of contractor, workman or employe punished, secs 252-254 575

INTOXICATING LIQUORS
Sale of to Indians. sec. 160 544
Sale of to soldiers, secs 188-190 552
Sale of to habitual drunkards, sec 257 577
On election days, sec. 258 577
Sale of in variety theatre, etc , secs 259-264 578
Sale of within two miles of railroad in process of construction, punished, sec 265 578

See Local Option

INTRUDING
Into office, sec 133 535

INVENTORY
Of property attached, sec 191 107
Executor or administrator to make and return, sec 118 301
As to community and separate property, sec. 120 301
As to moneys of deceased, sec. 121 302
Claim against executor must be included, secs 122, 123 302
To be signed by appraisers, sec. 124 302
Penalty for failure to return, sec. 125. 302
Of property not included in, sec 126. 302
Public administrator to return, sec 336 308
Of estate of minor. sec 358, p 363, sec 372 367
Of property, by legatee for life, sec 517 393

INVOLUNTARY MANSLAUGHTER
Defined, sec 28 506

IRRIGATION AND WATER RIGHTS
Who entitled to, and to what extent, sec 1239 993
Penalty for diversion of surplus water, sec 1240 393
Right of way for ditches, &c., sec. 1271 994
Rights determined by date of appropriation, secs 1242-1249 994
Streams used to full extent, but not to damage prior appropriations, sec 1243 994
Damages of constructing ditches, &c , sec 1244 994
This act not to impair prior rights, sec 1245 994
Rights of miners, manufacturers and and others recognized, sec 1246 994
Higways to be kept in repair, sec 1247. 994
Same, penalty for failure, sec 1247 994
Controversies determined by date of appropriations, sec 1249 995
Surplus water, sale of regulated, sec 1263 998
Same, duties of purchasers, sec 1266 998
Same, rights of purchasers, and damages, sec. 1265 998
Purchaser not to resell, and rights of original proprietor, sec 1266 999

See Corporations

Rights acquired by appropriation, sec 1250 995
Must be for some useful purpose, sec 1251 995
Changes may be made in location of ditch, sec, 1252 995
Water, how diverted and reclaimed, sec 1253 995

PAGE

IRRIGATION AND WATER RIGHTS.
First in time, first in right, sec 1254 995
Proceedings necessary to acquire water right, sec 1256 995
Duties of appropriator of water, sec. 1256 996
When right to water forfeited, sec. 1257 996
Water rights, how preserved and retained, sec. 1258 996
Records of water rights to be received by courts, sec. 1259 997
Proceedings in suits at law, sec. 1260. 997
Duties of county recorder, sec. 1261 997
Measurement of water, sec. 1262 997

ISSUE.
When will revoked by birth of, sec. 58 384
Property vested by testamentary disposition to, sec. 491 389
Inheritance by, sec. 534 395

ISSUES
Trial of when not raised by pleadings, sec. 3 59
When arise, sec. 246 120
Issue of law defined, sec. 247 120
Of fact defined, sec. 248 121
Of law, how tried, sec 249 121
Of fact, tried by jury, sec 250 121
Of law and fact, how tried, sec. 250 121
Entry on court calendar. sec. 251 121
Brought to trial, sec. 252 121
In cases against joint debtors, how tried, sec. 464 184
How tried in probate court, sec 326 354
When may be submitted to court in criminal case, sec. 276 456
See Evidence, Trial.

JACK
See Stallion.

JAIL.
Discharge of debtor from, sec. 147 95
Willful injury to, sec. 220 561
Escape, attempt to, penalty for, sec 229. 566

JAILER.
To receive and redeliver prisoner, sec. 448 487
Penalty for bribery of, secs. 112, 113 529
May be removed for inhumanity or oppression, sec 115 536
Aiding escape of convict, sec. 123 533
Suffering escape of prisoner, sec. 127 534
Refusing to receive criminal, sec. 128 534
To post up copy of law, sec 229 566
Default or misconduct of, punished, sec. 859 873
Sheriff may appoint, sec. 1271 1000
Penalty for defrauding prisoner, sec. 1273 1001
To receive United States prisoners, sec. 1275 1001

JAILS.
Exempt from execution, sec 1321. 145

JAILS AND PRISONERS.
Each county to build and keep jail in repair, sec. 1267 1000
Jails may be elsewhere than at county seat, sec. 1268 1000
Duties of county commissioners, safety of, etc , sec. 1269 1000
Sheriff to have custody of, and furnish supplies, sec. 1270 1000
Jailer, appointment of, etc., sec 1271 1000
Person acting in place of sheriff, rights and duties of, sec. 1272 1001
Penalty for defrauding prisoners, sec. 1273 1001
Return of sheriff concerning, and penalty, sec. 1274 1001

PAGE

JAILS AND PRISONERS
United States prisoners, duties as to, and fees and expenses of, sec 1275 1001
Hiring out, and earnings of prisoners, sec. 1276 1001
Removal of prisoners. sec. 1277 1002
Same, expenses of defrayed by county, sec 1279 1002
Delivery of convicts to penitentiary, sec. 1279 1002
Prisoners required to labor, sec. 1280 1002
Same, employment and use of proceeds of labor, sec. 1281 1002
Same, convicted of violating city ordinances, sec. 1282 1003
Authority to shackle prisoners, sec. 1283 1003
Unruly and refractory prisoners, punishment of, sec 1286 1003

JEFFERSON COUNTY
Court to charge grand jury as to killing bison, etc , sec. 270 580
Established, and boundaries of, sec 734 835

JEOPARDY
Person not to be twice placed in, sec. 10 405
How considered, in case of new trial in criminal action, sec 341 466

JOINDER
Executor, etc , need not join party in interest, sec 6 61
Of husband and wife, sec 7 61
Of parties plaintiffs, secs 14, 15, 16 62
Of plaintiffs or defendants, secs. 17-19 62
Of defendants severally liable, sec. 20 63

See Joint Debtors, Parties.

JOINT DEBTORS
Proceedings against, secs. 459-464 183
In case all not originally served, sec 459. 183
Summons and complaint in such case, sec 460 183
Affidavit to accompany same, sec. 461 184
Answer of, sec 462 184
Pleadings of, sec 463 184
Trial of issues, and judgment, sec. 464 184
See Parties

Separate composition, and discharge of, sec 1287 1004
Release of, in writing, sec 1288 1004
Same, of judgment to be filed, sec 1288 1004
Rights of creditors, and partners not released, secs 1289, 1290 1005
Extended to all joint debtors, except principal, secs 1291, 1292 1005
Sureties protected, secs 1292, 1293 1005
Judgment against principal and sureties, how entered, sec. 1293 1005

JOINT DEFENDANTS
Summons upon, sec 77 78

See Joint Debtors

JOINT OBLIGATIONS
To be joint and several, sec. 1296. 1006

JOINT RESOLUTIONS AND MEMORIALS
When to take effect, sec 1369 1010
Relating to employment of additional clerks 1243
For relief of Geo Bashaw, J H McFarland and John O'Neill 1243
For relief of Cree Indians 1244
For appointment of committee to confer with the authorities of Dakota in relation to measures for the prevention of contagious diseases among live stock 1244

PAGE,

JOINT RESOLUTIONS AND MEMORIALS
- To defray expense of telegraphing to delegate in congress 1244, 1249
- For relief of William Steele and Frank R Shaffer 1245
- For employment of additional clerks for enrolling bills 1245
- To defray expenses of executive department 1245
- For relief of D H. Weston 1245
- For relief of Farragut Post No 7 G A R 1246
- To defray expenses of joint committees 1246
- Instructing secretary to omit publication of a certain law 1247
- For payment of printing not provided for by general government, 1247
- For purchase of furniture, etc , for offices of governor and secretary 1248
- For relief of A. J Davidson and W. N. Baldwin 1249
- For relief of Charles H Snell 1249
- Making appropriation for historical society 1250
- Concerning Crow Indians 1250
- Concerning Ft. Buford military reservation 1251
- Asking that office of U S surveyor general be not abolished 1251
- Relative to pioneer settlers of Yellowstone National Park 1252
- Relating to the extension of the public surveys 1252
- Concerning the improvement of the Yellowstone National Park 1253

JOINT RIGHTS
- Joint tenants, how interest of descends, sec 1294 1006
- Right of action by one against another, sec 1295 1006
- Obligations to be joint and several, sec. 1296 1006

JOINT TENANTS
- When may unite in action, sec. 18 62

See Joint Debtors

- How may commence or defend suit, sec. 21 63
- Of waste by, sec 362 159
- Partition of property of, sec 377. 164
- Descent of property of, sec 1294 1006
- Injury, etc., of property of, sec 1295 1006

JUDGE.
- Disqualified, change of venue granted, when, sec. 62 72
- May order arest in civil action, secs 122, 123 91
- Examination of person arrested in civil action, secs 137-151 93
- May discharge imprisoned debtor, sec. 152 96
- May grant or dissolve injunction, secs 172-180 100
- Duties as to attachment of boats, secs 212-217 112
- Instructions to jury, sec 262 125
- To admonish jury on separation, sec. 272 128
- May order stay of proceedings on motion for new trial, sec. 300 138
- Affidavits taken before, secs 672, 673 235
- Duty in construing statute and writing, sec 630 225
- Duty on granting same, sec. 231 446
- Disability to act as such, sec 547 203
- Entitled to copy of newspaper containing laws, sec. 1633 1093
- Failing to arrest parties and prevent duel, penalty, sec 153 541
- How may punish contempt, secs 585-596 211

PAGE.

JDUGE
- Having seal, may take acknowledgments, sec 224 565
- May administer oaths, sec 693 241
- May admit defendant to bail, sec. 240 449
- May admit prisoner to bail, when, sec 103 423
- May be called as witness, sec. 652 230
- May correct errors in statement on appeal, sec 433 177
- May examine as to property of judgment debtor, and forbid transfer, sec 353 156
- May enlarge time for appeal, sec 434. 178
- May grant change of venue in vacation, sec 226 445
- May order garnishee process, sec 353. 156
- May order judgment debtor to answer as to property, sec. 351 156
- May order property applied on execution. sec 355 157
- May order property sold before judgment, sec. 541 202
- May punish party or witness in garnishee case, sec 356 157
- Must prevent fighting, sec 153 541
- May take depositions, sec 679 236
- May take acknowledgments, etc , sec 524 199
- Not appearing, clerk to adjourn court, sec 531 199
- Not to act as attorney, secs 531-532, 548-549 203
- Not to have partner in practice, sec 550 203
- Order arrest and imprisonment of absconding debtor, sec 351 156
- Order arrest of usurper of office or franchise, sec. 412 171
- Order to survey land in litigation, sec 371 161
- Proceedings before, to perpetuate testimony, secs 687-690 239
- Penalty for bribery of, secs 111-112 529
- Penalty for receiving illegal fees, sec. 134 536
- Powers of, sec 524 199
- Refusing an order, case how reviewed and penalty for violation, secs. 551-552 204
- Stealing or falsifying records, penalty sec 114 530
- To sentence convict to penitentiary of another state, sec 295 669
- To settle and sign bills of exception, sec 349 467
- To sign statement on appeal, when, sec 435. 178
- Vacancy in office, effect of, sec 525 199
- What deemed contempt of, secs. 584-585 210
- Witness required to attend, sec 655 232
- When to certify amount of costs, sec 410 479

See Habeas Corpus

JUDGES OF DISTRICT COURT.
- One for each district, sec 699 242
- General powers of, sec 702 243
- Powers of, at chambers, sec 704 243
- To approve appointment of deputy clerk, sec 194 645
- To compare indictment, sec 178 437
- May grant writ of habeas corpus, sec. 1166 975
- Duties as to assessment of damages for rights of way to mines, etc., sec 1498-1501 1059
- Must instruct grand jury, sec 65, p. 512, sec 160, p. 544, sec 224 565
- Proceedings to condemn lands for corporations, sec. 686 814

See Judge, District Court.

JUDGE OF PROBATE COURT.
- To be an officer of the peace, sec. 20. 407

PAGE
JUDGE OF PROBATE COURT
Duties on complaint against offender, secs, 21-25 407
Disqualified, action certified to district court, sec. 711 245
Conservator of the peace, sec 712 245

See Judge, Probate Judge.

JUDGE OF SUPREME COURT
To order arrest of usurper of office or franchise, sec 412 171
Powers of, sec 524 199
Effect of vacancy in officc, sec. 525 199
To be an officer of the peace, sec 20 407
Duties of on complaint against offender, secs 21-25 407
May grant writ of habeas corpus, secs. 1166, 1167 975
Entitled to supreme court reports, sec. 1995 1215

JUDGES OF ELECTION,
Fees, of, sec. 1038. 933

See Elections.

JUDGMENT.
Action against bail in civil cause, sec 132 92
Against associates under common name, sec 25. 64
Against boat attached, secs 217, 218 113
Answer by, as to debts due, sec. 353. 156
Against decedent, how recovered, sec. 162 314
Against decedent, lien of, how payable, sec 163. 314
Against embezzler of property of estate of decedent, sec. 131 304
Against executor or administrator, effect of, sec. 161. 313
Same, transcript, where filed, sec. 161 313
Same, execution upon not allowed, sec. 161 313
Appeal from in claim and delivery, sec 425 175
Appeals from in probate court, secs. 445-458 181
Appeal from, how taken, sec 564 206
Appeals from same, sec. 730 249
Appeal from to district court, sec. 822 272
Appeal from probate to district court, secs. 324-325 354
Against joint debtor, how obtained, sec 459 183
Appointment of receiver, secs 229-231. 115
Against party refusing to testify, etc. sec 671 235
Against public administrator failing to pay over to territory, sec. 347 360
Affecting real estate in other county, sec. 65 73
Against sheriff for bail, proceedings on, sec 144 94
Against some of several defendants, sec. 795. 265
By confession, sec. 465 184
By confession in justice's court, sec 738 251
By default, sec 87, p 81, sec 245 119
By default, sec. 792 265
Certified copy served, when, sec. 316 144
Costs, how taxed and collected, sec. 520 197
Costs in case of failure to change on appeal, sec. 456. 183
Costs in discretion of court if modified, sec. 500 193
Creditor may redeem real estate, sec. 162. 314
Creditor, redemption by, secs 341-342 151
Contribution, right of by debtor paying, sec. 348 154
Copy of recorded, effect of, sec. 391 167
Copy of same transmitted to inferior tribunal, sec. 563 206

PAGE
JUDGMENT
Discharging agent for absent parties, sec 312 352
Dismissal, sec 241 119
Docket defined and form of, sec 308 140
Same, clerk to keep and his duties, sec. 308. 140
Same kept open, sec 309 140
Docket, how kept, sec 307 139
Definition of, sec 238 118
Debtor, order to answer, secs. 350, 351 155
Same, when may be arrested, sec. 351 156
Same, undertaking of, sec 351 156
Disobedience of, contempt, sec 184 210
Enforced after death of party, sec 317, 144
Execution issued, sec 312 142
Entry of satisfaction, sec 311, 140
Entry on appeal, sec 443 179
Examination of debtor arrested on, sec 150 95
Filing and entry of statement and judgment roll, sec. 467 185
For costs on termination of action, sec 244 191
For costs, sec 799 266
For defendant, sec 302 138
For nuisance, sec 361 159
For personal property, sec 117 88
For plaintiff on issue of law, secs. 281, 282 130
For possession enforced by execution, sec 316 144
For partition of real estate and effect of same, sec 391 167
For or against one or more of several parties, secs 239, 240 118
For return of personal property, sec 161 98
For usurping office, 413, 417, 172
For waste, sec 362. 159
Homestead entered on verdict of jury, sec. 302. 138
Homesteads exempt from lien, secs 322-330 147
How pleaded, sec 103 86
In case of reversal, limitation for new action, sec 51 70
In contempt secs 591-596 212
In case of attachment, for debt not due, sec 183 104
In district court for less than $50, sec. 700 243
In forcible entry and detainer, sec 724 248
In favor of sheriff, on indemnifying bond, 533 200
In justice's courts, secs 791-800 265
In mandamus, sec. 576 208
Issue of execution on after five years, sec 349 154
In probate court, not lien on real estate, sec 710 244
In probate court how entered and enforced, sec 326 354
In trespass, sec. 363 159
Judgment book, sec 304 139
Judgment roll, sec 606 139
Judgment roll in same case, sec 564 706
Limitation of action, upon, sec 41 68
Limitation of lien, sec. 307 139
Lien of, when revived, sec. 347 153
Lien of costs of suits by minor heirs, sec 562 401
May be forbidden to transfer property, sec 353 156
Money deposited for bail, applied on, sec 142 94
Not reversed for what errors in pleading, sec 119 89
Not reversible for want of written finding, when, sec 280 130
Non-suit, sec 242 118
On appeal from district court, sec. 444 180
On advancements to heirs of decedents, sec 305 350

PAGE.
JUDGMENT
On contest of probate of will, sec 22 281
Of dismissal without prejudice, with costs, sec 791 265
On foreclosure of mortgage, sec 358 158
On issue of law, reference of account, secs 281, 282 130
Same, how plaintiff may proceed, sec 282 131
Of probate court, force and effect of, sec 1 274
On report of referee, sec 288 132
On report of referee of claim against estate, secs 165, 166 314
On trial by court, sec 280 130
On trial by justice, sec 793 265
On verdict, sec 794 265
On verdict, secs 275-278 128
On writ of certiorari, sec 562 206
Person entitled may recover damages, sec. 415 172
Person indebted to may pay sheriff, sec 352 156
Powers of appellate court, secs 400, 441 179
Power of court to enforce, sec 546 203
Proceedings to compel answer, sec 351 156
Roll, execution to be attached to, sec 315 143
Relief given plaintiff, sec 241 118
See Appeals, Execution, Liens,

Revival of, if purchaser evicted, sec 347 153
Reviewed on appeal, sec 418 173
Right of debtor to direct sale under, sec 334 150
Successor may serve execution on, sec 809 270
Sale of property before, on attachment, sec 541 202
Satisfaction of, in attachment, secs. 194, 195 105
Statement to authorize in such case, sec. 466 184
Time allowed for appeal, sec 421 174
To be rendered upon merits, sec 243 119
To be entered in justice's docket, sec 805 269
To be recorded in recorder's office, when, sec 329 355
Transcript from justice's court and lien, sec 800 266
To include costs, sec 513 195
Transcript on appeal from, sec 438 178
Transcript to another county, lien of, sec 310 140
To recover personal property, sec 303 139
Upon referee's report in partition, sec 391 167
When award to have effect of, sec 477 187
When case agreed and submitted, sec. 468 185
Same, how entered and enforced, secs 469, 470 185
When defendant offers compromise, sec 471 186
When debtor to answer concerning property, sec. 350 155
When party may be relieved from, sec. 116. 88
Where party dies after verdict, sec 305 139
When plaintiff's title terminates during action, sec 368 160

See Execution, Garnishment, Liens

Penalty for bribery to procure sec 111 529
By false personation, sec, 117 531
Penalty for purchase of by justice or constable, sec 135 536

PAGE.
JUDGMENT
Delaying collection of, by frauds, punishment, sec 203 557
Lien of attorneys upon for fees, sec 116 623
In bastardy case, sec 155 635
On bill or note may be assigned to party paying, sec 162 637
Against county or county commissioners, how collected, sec 751 843
In favor of county, duty of clerks as to, sec 976 909
On examination of dam or reservoir, sec 991. 915
Effect of, for breach, of official bond, sec 1047 935
Interest on, secs 1237, 1238 991
Against district, school trustees liable for, sec 2000, 1216

See Joint Debtors

JUDGMENT BOOK
Kept by clerk, sec 304 139

JUDGMENT CREDITORS
May have a debtor answer as to property, secs, 350, 351 155
Summoned in partition sec 381 164
Answer to same, sec 383 165
May redeem real estate of decedent, sec 162 314

JUDGMENT DEBTOR
Property of, exempt from execution, secs 321-326 145
Entitled to excess of proceeds on judgment, sec. 331 148
May select property to be sold, sec 331 148
May direct sale on execution, sec. 334 150
Redemption by, secs 341, 342 151
When to answer as to property, secs 350, 351 155
Not required to go beyond county, sec. 350 155
When may be arrested, sec 351 156
Proceedings against in such case, sec. 351 156
Person indebted to, may pay sheriff, sec 352 156
Liability for balance on foreclosure, sec 358 158
Property applied on execution, sec. 355 157
Claim of third party to property, sec. 356 157
Required to answer concerning property, sec 803 267

JUDGMENT DOCKET.
Form of, secs 307,308 139
Open for inspection, sec. 309. 140
Transcript of judgment before justice, to be entered in, sec 800 266

JUDGMENT IN CRIMINAL CASE.
On impeachment of officer, sec 54 413
Removing officer convicted of crime, sec 60 414
On recognizance, sec 106 424
On recognizance, arrest of, sec 108 424
How alleged in pleadings, sec 173 436
On demurrer to indict, sec 214 443
Motion to arrest for defects in indictment, sec 217 447
Plea of former to indictment, sec. 218 444
When defendant admitted to bail on appeal from, secs 242-244 449
On verdict, secs 345-347 466
Discretion of court as to, sec 348 467
Arrest of, secs 358, 359 469
In criminal court to appoint time for, sec 361 471
Time for pronouncing to be fixed, sec 361 471

PAGE

JUDGMENT IN CRIMINAL CASE
- Limitation of time, sec 362. 471
- Presence of defendant, when necessary, sec 363 471
- If in custody to be brought in, sec. 364 471
- Defendant may show cause against, sec. 366 471
- When rendered, sec. 367 471
- Commitment for fine and costs, sec 368 471
- Prosecutor adjudged to pay costs, proceedings against, sec 369 471
- Ratio of imprisonment in lieu of fine and costs, sec 370, p 471; secs. 384-391. 474
- Entry of in minutes, sec 371 472
- Commitment for, how issued, sec. 372 472
- Sentence of death, warrant to be issued, sec 375 472
- Sentence of death, how executed, secs. 378, 379 473
- Not entered against lunatic, sec 392 475
- Person committed for fine and cost, how released, secs. 390, 391 475
- Same, commutation of sentence, sec. 391. 475
- On appeal by territory, secs. 396-402. 476
- Appeals from, secs 394-409 476
- In criminal action, executed by sheriff, sec. 454 488
- Of the lien for fine and costs, secs 463-465 489
- How entered as to several defendants, sec 496 495
- Against prosecutor in probate or justice's court, sec 507 496
- Against defendant in same, sec 508. 496
- Appeals from same, sec 510 497
- Of district court on appeal, sec. 515. 497
- Certified copy of delivered to jailer, secs 528, 529 499
- On appeal by prosecutor for costs, sec 530. 499

JUDGMENT ROLL.
- What shall constitute, sec 306. 139
- Certificate attached to on appeal, sec 443 179
- What to constitute on confession, sec 467 185
- In writ of certiorari, sec 564. 206

JURAT.
- Penalty for false certificate to, sec 140 537

JURISDICTION.
- In case of county attached for judicial purposes, sec 60 72
- When acquired by court in civil action, sec. 80 79
- Want of, cause for demurrer, sec 87. 81
- Of supreme court, sec. 697 242
- Of district court, civil, secs 699, 700 242
- Of probate court, civil, secs. 707, 708 244
- When concurrent transfer of action from district to probate court, sec 705 243
- Of justice in forcible entry, etc, sec 717. 246
- Of justice of the peace, civil, secs. 734-739 250
- Of district court, over cause certified from justice, secs 779, 780 261
- Proceedings in probate court not void for want of, when, sec 61. 290

JURISDICTION IN CRIMINAL CASES.
- Of probate court and justice of the peace, sec. 6. 404
- When cause tried where first commenced, sec. 7. 404
- Where crime partly committed in different counties, secs. 32-36 409
- Offence tried in county where committed, sec. 30 409

PAGE.

JURISDICTION IN CRIMINAL CASES
- By non-resident through agent, sec 31 409
- Offences occurring in two or more counties, sec. 32 409
- On boat or vessel, sec 32. 409
- In case of kidnapping, sec 33 409
- Enticing away female or child, sec 33. 409
- Of stolen property taken from one county to another, sec 34 410
- In punishment of accessory, sec 35 410
- When crime and death in different counties, sec 35 410
- Defendant indicted in county not having, sec 311 462
- Same in district not having, sec 319 463

JUDICIAL.
- What days deemed exceptions, secs. 530, 531. 199

JUDICIAL DISTRICTS
- Territory divided into, sec 698 242
- District judge for each, sec. 699 242

JUDICIAL NOTICE.
- Court to take of what, sec 643 228

JUDICIAL RECORD.
- How proved, sec 645 228

JUROR.
- What considered contempt of court by, sec. 584. 210
- May be called as witness, sec 652 230
- Defaulting, how punished in justice's court, sec 729 249
- Penalty for default in forcible entry and detainer, sec 729 249
- Qualifications of in criminal actions, sec, 277 456
- Challenge of, secs. 278-291 456
- Disqualifications of, sec. 280-287 457
- Contempt, to disclose material fact to jury, sec 314 462
- Becoming sick, discharge and new selected, sec 325 464
- Contempt, if failing to declare dissent when polled, sec. 336 465
- Qualifications of in probate and justice's court, sec. 489 495
- Bribing or attempting to bribe, sec 230 535
- Receiving bribe, sec 131. 535
- Penalty for neglect to summon, sec 139. 537

See Jury

JURORS.
- Names of entered when verdict received, sec. 278 129
- Time of kept by clerk, sec. 422 481
- Trial, how selected, sec. 1297 1007
- To examine dams and reservoirs, secs. 985-989 913
- Fees of for same, secs. 991 915
- Same certified to clerk of court, sec. 1298 1007
- Venire, issue, service and return of, secs. 1298, 1299 1007
- Same open to inspection, sec 1299 1007
- Box and key, use of and how kept, secs 1300, 1301 1007
- Additional, how drawn and summoned, sec. 1301. 1008
- Grand, how selected and summoned, sec. 1302 1008
- Special grand jury, sec 1303 1008
- Who competent to serve as, sec. 1304 1008
- Who exempt, secs 1305, 1306 1009

See Militia
- Penalty for failure to attend, sec. 1306. 1009

PAGE.

JURY
- Adjournment and sealed verdict, sec 270 . . 127
- Challenges, sec 790 . 264
- Challenge for cause, sec 259 . 124
- Challenge of, sec 257 123
- Court open for purposes of, sec. 269 127
- Competency of, sec 789 264
- Court to admonish on separation, sec 272 . 128
- Disagreeing in justice's court, new venue, sec 725 . 248
- Duty on disagreement as to testimony or law, sec. 267 127
- Entry of verdict, sec 277 129
- Failing to agree, discharged, sec, 268 127
- Filling vacancies, sec 261 124
- Grounds for challenge, sec 258 123
- How drawn and number of, sec 255 122
- In forcible entry and detainer, sec 720 . . 247
- In case of eminent domain, on appeal, sec 608 218
- In case of alleged insanity of ward, sec 366 . 365
- In probate court, secs 714-715 245
- Instruction to, sec 262. 125
- If verdict informal, must be corrected, sec 271 . 127
- Issues of fact tried by, sec 250 . 121
- Kept together after retiring, sec 265 126
- May give damages for causing death of person, sec 982 912
- Misconduct of, etc , cause for new trial, sec 296 135
- May view property or place, sec 263 126
- Number of, sec. 788 264
- On contest, of probate of will, secs 21, 22 280
- Of exceptions, secs. 289-293 133
- Oath of, sec. 256 123
- Order of challenge, sec 260 124
- Retirement to deliberate, sec 265 126
- Sickness of juror, sec 264 126
- Trial by, in mandamus, sec. 571 207
- To condemn land for railroads, sec. 685 . . 812
- Trial in justice's court, sec 787 264
- Trial of facts not at issue, sec 3 59
- To try issue of fact in probate court, sec. 327 . 355
- Verdict, general or special, secs. 274, 275 . . 128
- When to find amount, sec 276 129
- When trial by, may be waived, sec 279 . . 129
- When waived, when demanded, and how summoned, sec 787 . 264
- What papers may take, sec 266 126

JURY IN CRIMINAL CASE
- Admonish by court on separation, sec 315 . 463
- Charge and instructions to, sec 307 461
- Challenge, secs, 284-291 . 457
- Charge, sec. 326 464
- Causes for new trial, sec. 354 468
- County to board and lodge, sec. 324 464
- Challenge to, for corruption of officer, sec 453 . . . 488
- Duty as to statement of defendant, sec 15 502
- Discharged in certain cases, secs 312-318 462
- Duty of juror having knowledge of fact, sec. 314 462
- Discharge of when allowed, sec 331 465
- Dissent of juror not declared, penalty, sec 336 465
- Either party may demand, on appeal from justice's court, sec 826 . 273
- Instructions after retirement, sec 330 464
- In case of insane convict, secs. 380, p. 473, sec. 338 . . 465
- Insane convict cases, sec. 312 673
- In probate or justice's court, waiver of, sec. 486 . . 494
- Same, challenges, sec 490 . 495

JURY IN CRIMINAL CASE
- Same not changed as to questions of fact, sec 491 . 495
- Issues to be submitted to, sec. 276 456
- In trials of insanity, sec 1215 985
- If unable to agree may be discharged and new empanelled, sec 497 495
- Judges of credibility of witness, sec 14 502
- May assess and declare punishment, sec 344 . 466
- May be discharged by court, when, sec 318 463
- May be polled, sec 335 465
- May find defendant guilty of offence less than charged, sec 182 438
- May inflict death for arson, sec 68 514
- May separate, when, sec 323 464
- May separate, when, sec 492 . 495
- Officer failing to summon, penalty, sec 139 . . . 537
- Panel filled after challenge, sec. 291. 459
- Procedure when case submitted, sec. 316 . . . 463
- Room furnished for deliberation, sec 329 . . . 464
- Sickness of juror during trial, sec 325 . 464
- To acquit in case of reasonable doubt, sec 307 462
- To be in charge of officer, when, sec 316 . 463
- Tax costs against prosecuting witness, when, sec. 530 499
- To declare degree of offence, when, sec 342 . . 466
- To declare value of property in verdict in criminal action, sec 343 . 466
- To designate degree in murder, secs 21-24 . 505
- Trial, how formed, sec 283 457
- Time of attendance kept by clerk, sec 422 . . 481
- To try question of pregnancy, when, sec 384 474
- Verdict of necessary to convict of crime, sec 8 . 404
- Verdict of, secs 493, 494, 496 .. . 495
- Verdict, return, filing and record of, sec 334 . 465
- Venue changed if impossible to obtain, sec. 228 . 446
- When may fix punishment, sec 498 495
- When to view place, sec 322, p. 464, sec 451 . . 487
- When to tax costs, sec 413 .. 480
- When divorced, case tried by, sec 1003 920

JURY, CORONERS.
- See Coroner

JURY FEES
- In justice and probate court in civil action, taxed to unsuccessful party, sec 519 196
- Unclaimed, paid to county, sec 1103. 954
- Same, duties of officers in regard to, secs 1104, 1105 . . . 954
- Same, kept one year and transferred to county fund, sec 1105 . 954
- Same, penalty for failure to pay over, sec 1107. 954

JUSTICE OF THE PEACE
- Affidavit and undertaking for, sec. 747 . . . 254
- Amendments and effect of, sec. 770 261
  - See Answer, Complaint, Demurrer, Venire, Trial
- Affidavit and notice, sec 821 272
- Affidavits, etc., taken by, secs 672, 673 235
- Actions for possession of personal property, secs 758-767 . 256
  - See Claim and Delivery.
- Actions, how commenced, sec 740, . 252
- Same, guardians in, how appointed, sec. 741 252

PAGE.

JUSTICE OF THE PEACE
- Adjournment of action by justice or by consent, sec. 781 262
- Authority of, sec 814 271
- Adjournment of trial, effect of, sec. 751 255
- Answer to pleading, what to contain, sec. 772 260
- Attachment, proceedings, secs 754-757 256
- Adjournment upon ex-parte application; secs. 782- 784 262
- Appeal, undertaking and justification of sureties, sec 823 272
- Blanks in papers to be filled, otherwise void, sec. 811 270
- Costs allowed prevailing party, sec. 828. 273
- Civil code applicable to proceedings, sec 804 269
- Co-extensive with limits of county, sec 736 251
- Change of venue where action tried, sec 63 73
- Costs on appeals from, to whom taxed, sec 502 193
- Contempt of by re-entry of real estate after dispossession, sec. 585 211
- Complaint to state facts, sec 771. 260
- Depositions, sec 819 271
- Defendant demanding adjournment to execute undertaking, sec. 752 255
- Docket, how kept, secs. 805, 806 269
- Defendant may demand trial, sec. 751 255
- Duty of officer making arrest, secs 748-750 255
- Dismissal of action, sec. 785. 263
- Duty on expiration of term of office, sec. 808 280
- Duties of, on complaint against offender, secs. 21-25 407
- Execution by successor in office, sec. 809. 270
- Entries in, primary evidence, sec. 806 270
- Evidence to correspond with pleading, sec. 640 226
- Form of, sec. 770 260
- Failing to perform duty in criminal case, sec. 519 198
- Failing to arrest parties and prevent duel, sec. 153 541
- Female shall not be arrested, sec 746 254
- In actions on account, or written instruments, sec, 774 260
- Index to docket, what to contain, sec. 807 270
- Jurisdiction and proceedings in forcible entry and detainer, secs. 717-733 246
- Judgment and execution, secs. 791-803. 265

See Judgment, Execution.

- Judgment by confession, sec. 738 251
- Jurisdiction by voluntary appearance, sec. 739 251
- Judgment debtor may be examined touching his property, sec. 803 267
- Judgment rendered, and acts specified in docket, sec 817 271
- Jurisdiction of crimes and misdemeanors, sec. 6 404
- May administer oaths, sec. 693 241
- May issue warrant for arrest of witness, when, sec. 663 233
- May issue subpœnas, and final process, sec. 818 271
- May punish for contempt, sec. 816 271
- May require security for costs, sec. 830. 273
- May require attendance by subpœna, sec 655 232
- May take acknowledgments and affidavits, sec. 524 199
- May take depositions and directions therefor, secs 678-685 236

PAGE.

JUSTICE OF THE PEACE.
- No judgment for costs after tender, sec. 797 266
- Name of court, jurisdiction generally, secs 734, 735 250
- New trial, when granted, sec 220 271
- Of arrest and imprisonment, sec 798 266
- Order of arrest, how issued, sec. 746 254
- Objections to pleadings, sec. 776 260
- Penalty for failure, sec. 829. 273
- Prosecutions for crimes before, how conducted, sec 5 404
- Penalty for bribery of, secs 111-113. 529
- Penalty for receiving illegal fees, sec. 134 536
- Penalty for buying judgment, sec 135 536
- Pleading in suit against joint debtors, sec. 463 184
- Proceedings in attachment of boats, secs. 212-218 112
- Pleading in justice's court, secs. 768, 769 259
- Proceedings in bastardy cases, sec 150. 633
- Parties may act in person or by attorney before, sec. 737 251
- Parties may remit excess and take judgment for residue, sec 796 266
- Powers of, sec 524 199
- Publication of summons, sec 745 253
- Plea of defendant, sec. 753 256
- Provisions of practice act to apply, sec. 753 256
- Same, powers of justice under, sec 753 256
- Provisions of civil code applicable, sec 757 256
- Power to receive and pay over money, sec. 829 273
- Proceedings when title to real property raised, sec 779 261
- Special deputy to serve process, sec 813 271
- Summons, what to contain, sec 742. 252
- Same, return of, sec 743 253
- Same, manner of service, sec. 744 253
- Stay of proceedings, sec 827 273
- Stealing or falsifying records, penalty for, sec. 114. 530
- To be tried anew in district court, sec 826 273
- Trial by jury, sec. 787 264

See Jury.

- To be an officer of the peace, sec. 20 407
- Transfer of action to another justice, sec 780 262
- Transcript on appeal, sec. 824 272
- To issue alias process in such case, sec. 585 211
- When action may proceed by request, sec. 786 263
- When appellant not to recover costs, sec. 825. 273
- Where courts of to be held, sec. 532. 200
- Who deemed successor, sec 810 270
- What equivalent to denial, sec. 773 260
- When genuineness of instruments admitted, sec. 775. 260
- When sick, another justice may act, sec. 812 270
- Witnesses subpœnaed, required to attend, sec. 655 232
- Where to hold court, sec 532 200
- Variance between proofs and allegations, when disregarded, sec. 777 261
- Venue changed, transfer of papers, jurisdiction and fees, sec. 64 73
- Vacancy in office, effect of, sec. 525. 199
- May take acknowledgments, sec. 238 656
- Person taken under coroner's warrant, proceedings, secs. 879, 880 877
- When to act as coroner, sec. 882. 878
- Powers and compensation as coroner, sec. 926 889

PAGE.
JUSTICE OF THE PEACE.
Election and term of office, sec. 928. 890
Bond and oath of office, sec 929 890
Account and settlement with county commissioners, secs 967-977 908
Certify fines to county board, sec. 977 910
Pay unclaimed witness and jury fees to county, sec 1103 954
Notice, etc , in regard to same, sec 1104 954
Jurisdiction in cases under Lord's Day act, sec. 1409 1039
Report to county superintendent and penalty for neglect, sec 1903 1188

See Probate Court

JUSTICE OF SUPREME COURT.
May erase name of attorney from roll, sec. 106 620
Expenses and mileage, how paid, sec 1101 953
To apportion expenses between counties attached for judicial purposes, sec 1102 953

JUSTIFIABLE HOMICIDE
Sec 32, p 506, sec 39 508

JUSTIFICATION.
In action for libel or slander, sec 108 86
Of bail in civil action, sec 135 93
Proceedings to justify, sec 137 93
Of sureties for injunction, sec. 176 101
Of sureties in attachment, sec 182 104
Of sureties on appeal, secs 428-430 176
In libel, sec. 154 541

See Bail, Bond.

KIN.
Next of, what vested by testamentary disposition to, sec. 491 389
Same, damages for injuries to decedent recovered by, secs 981, 982. 94

KINDRED.
Degree of, how established, secs. 538-542 397

KILLING
See Homicide
See Animals

KIDNAPPING.
Offence of, where tried, sec 33 409
Defined, sec 51 510
Punished, secs. 52-54 510
Attempt to kidnap, sec 53 510

LABEL
On poison required, sec. 183 551
Counterfeiting, sec. 99 525

LABORER.
See Wage Workers.

LAKE.
Obstructing or polluting, sec. 162 546

LANDLORD
When joined with tenant as defendant, sec 16 62
Possession of tenant protects, sec. 37 67

LANGUAGE.
Written proceedings in English, sec. 526 199
Abbreviations allowed, sec 526 199
Oath to include affirmation, sec. 539 201
Signature to include mark, sec 539 201
Present tense includes future, sec 539 201
Singular number includes plural, sec 539 201

PAGE
LANGUAGE
Plural number includes singular, sec 539 201
Masculine gender includes feminine, sec. 539. 201
Writing to include paper or printing, sec. 539 201
Interpretation of, sec 629 225

LAND
Cutting timber on, penalty, sec. 363 159

See Real Estate, Eminent Domain.

LARCENY
Jurisdeiction of trial for, sec 34 410
Assault with intent to commit, sec 56 413
When indictment not found for, sec 153 432
Burglary to commit, secs 74-77 515
Grand, defined and punished, sec 78 516
Of domestic animals, sec 79 517
Petit, sec 79 517
Of dogs, sec. 80. 517
Goods of which larceny may be committed, sec 81 517
When embezzled, secs. 87-89 519
By clerk or servant, sec. 92 522
By bailee, penalty for, sec 93 522
By lodger, sec 94. 522

LAUNDRY
See License.

LAW
Form of action at, sec 1. 59
Issue of, defined, sec 246 120
Same, when arises, sec 247 120
Same, how tried, sec 249 121
Error in, ground for new trial, sec 296 135
Defacing copy of, etc. punished, sec 173 548
Common, of England, in force, when sec. 159 544

LAWFUL AGE
What declared to be, sec 1204 981

LAW LIBRARY
See Montana Library

LAWS
Of nature, judicial notice taken by court, sec 643 228
Defacing of, sec 173 548
Secretary to make copies, when, sec. 1966 1207
Laws, etc , when to take effect, sec 1307 1010
Laws, etc., which do not take effect immediately, when to be in force, sec. 1308 1010
Form of enacting clause, sec 1309. 1010
Secretary authorized to compile laws, sec 1310 1010
Construction, sec 1311 1010
What to omit and what to supply, sec 1312 1010
Declaration of Independence, etc., to be included, sec 1313. 1011
Index and marginal notes, sec 1314. 1011
May employ assistance, appropriation, sec 1315. 1011
Certificate, sec. 1316. 1012
Copy to be transmitted, to each member of the fifteenth legislative assembly, sec. 1317 1012
Conflicting acts repealed, sec. 1318 1012
Compiled statutes, what to embrace, sec 2071 1235

See Repeal Provisions
See Special Laws.

PAGE.

LAWYERS.
See Attorneys' Licenses

LEGACY
How distinguished and designated, sec. 509 391
In contemplation of death, etc, sec. 519 393
When due and deliverable, sec 520. 398
When to bear interest, sec 521. 393
Order in which paid, sec 512 392
Order in which chargeable, secs 512, 518 392
Abatement of, sec. 514 393
How title passes and possession obtained under, sec 515 393
Duties of legatee if for life only, sec. 517 393

LEGATEE.
May petition to have will proved, sec 9 278
May contest will, sec 17 279
May object to granting letters to executors, sec. 46 287
Probate Judge being, to transfer proceedings, when, sec 109 298
To have notice of application of executor, or administrator to borrow money, sec 172 318
Of distribution of estate to, secs. 284-293 345
To be notified of petition to sell real estate of decedent, sec 189 322
Agreement of testator to sell property, how enforced against, sec 461 384
Property devised to societies to go to, when, sec 478 386
To furnish inventory, when, sec. 517 393

LEGISLATOR
Penalty for bribery of, secs 112, 113 529
Railroad passes to, etc, prohibited, sec 700. 818

LEGISLATURE
Intention in construing statute, sec. 631 225
Auditor's office open to inspection of, sec 125 627
Power to alter or repeal act of incorporation, sec. 466 730
Resignations of members, sec 1319 1013
Resignations to be addressed to the governor, when, to presiding officer, when; sec 1319 1013
Governor to issue writ of election to fill vacancy, sec. 1320 1013
Writ of election to be directed to sheriff, sec 1321 1013
Sheriff shall cause election to be held, sec 1322 1014
When district altered or divided, how election to be held, sec 1323 1014
Time and place of regular sessions, sec 1324 1014
Certificate to be held as prima facie evidence of election, sec 1325 1014
Temporary organization of council, sec. 1326 1014
Permanent organization of council, sec. 1327. 1015
Term of office of officers of council, how removed, sec 1328 1015
Temporary organization of house of representatives, sec 1329 1015
Permanent organization of house of representatives, sec. 1330 1015
Subordinate officers to take an oath, sec. 1331 1015
Majority vote necessary for election of officers, sec 1332 1015
Relative to absentees, sec. 1333 1015
Resignations of members of legislature, sec 1334 1016
Chairman of committee to administer oath in certain cases, sec 1335 1016
Apportionment of members of the council, sec. 1336 1016

LEGISLATURE.
Apportionment of members of house of representatives, sec. 1337 1016
Apportionment for Fergus county, sec 1338 1017
Apportionment for Park county, sec. 1339 1017

See Election See Printing.

LEGISLATIVE ASSEMBLY.
Acts of, how designated, sec. 1309 1010

LETTER
Threatening, sec 64, p 512, sec 187. 536
Opening or reading another's, penalty, sec 188 537

LETTERS
Testamentary, power of probate court as to, sec. 707 244
Same, when granted, secs 6, 7 276
Same, when and to whom issued, sec. 44 287
Same, form of, sec 52 288
Of administration with will annexed, sec. 53 289
Same, form of, sec 54 289
Same, to whom granted, sec 55. 289
Same petition for, sec 61 290
Same, when granted, sec 62 291
Same, revocation of, sec. 70 292
Same, citation for, sec 71 292
Same to be recorded, sec 74 292
Same revoked if will found, sec 102 297
To whom issued in case of death of executors or administrators, sec 105 297
Same, of estate discovered after settlement, sec. 313 352
Order granting may be appealed from, sec 324 354
Of guardianship, how issued and form of, sec 358 363
Same to be recorded, sec. 360 364
Intention of testator to be followed in granting, sec. 523 393

LEWIS AND CLARKE COUNTY
Act creating and prescribing boundaries of, sec. 785 835
Act authorizing building of court house, amendment of, sec 1 1242

LIBEL
Limitation of action, sec. 45 69
Pleading in case of, sec 107 86
Answer, allegations, etc, sec. 108 86
Indictment for, sec 190 438
Defined, rule of decisions in cases of, sec. 154 541

LIABILITY
Limitation of action on, sec. 44. 69

LIBRARIAN
Territorial auditor to be sec 1588 1081

LIBRARIES
See Corporations, secs 670-676 805
See Free Public Libraries
See Montana Library

LICENSE.
Forfeiture of by saloon keeper, sec 210. 559
Doing business without, sec. 225 565
Of attorney at law, secs. 102-111. 619

LICENSES.
Blank, auditor to furnish collector, sec 119 625
County commissioners may grant, sec 756. 844
Territorial, one-fourth payable in warrants, sec 1126. 960

PAGE

LICENSES
- Billiard or pool table, theatres, exhibitions, etc, pawnbroker, intelligence office, professional man, assayer, sec 1341 1018
- Livery stable, hay yard, etc, sec. 1342 1019
- Merchant, sec 1343 1019
- Auctioneers, sec 1344 1020
- Hotels, etc, sec. 1345 1020
- Retail liquor dealers, sec 1346 1020
- Proceedings to obtain license for retail liquor dealer, power to revoke; penalty, sec. 1347 1021
- Penalty for selling adulterated liquors; license for distiller, etc; wholesale dealer; penalty, sec 1348 1022
- Brewer, sec 1349 1022
- Gambling, penalty, sec 1350 1022
- Peddler, etc, sec 1351 1023
- Skating rink, sec 1352 1024
- Toll road, bridge, water company, etc, sec 1353 1024
- Toll road or water company to make statement of receipts, sec 1354 1024
- Laundryman, sec 1355 1025
- Lottery, etc, sec 1356 1025
- Bowling alley and shooting gallery, sec 1357 1025
- Stage or express company, sec 1358 1025
- Commercial traveler, drummer, etc, sec. 1359 1026
- Licenses granted not more than one year nor less than one quarter, sec 1360 1026
- Duty of county treasurer, sec. 1361 1026
- Telephone and telegraph company, sec 1362 1026
- Gas and electric light companies sec 1363 1026
- Proportions of licenses paid to territory and county, sec 1354 1026
- Amount due for license a prior lien, sec. 1365 1027
- Penalty for transacting business without license, sec 1366 1027
- Penalty if treasurer fails to perform his duty, sec 1367 1027
- Manner of ascertaining population of town, etc, sec 1368 1027

LIEN
- Of judgment against associates, sec. 25. 64
- Effect of notice of lis pendens, sec 70 75
- In attachments, when to accrue, sec. 204 109
- Against boats, sec 207-210. 111
- Against rafts, sec, 211 111
- Of judgment on real estate, sec. 307 139
- Of transcript from other county, sec 310. 140
- See homesteads, secs 323-336 147
- Redemption by holder of, secs 341, 342. 151
- Of revived judgment, sec 347 153
- Of judgment for deficiency on foreclosure, sec 358 158
- Holder of, when party to suit, secs 379-382 164
- Same, answer of, on partition, sec 383. 165
- Same, made party in partition, sec 386 166
- Same, notice to, in partition, sec 387 166
- Extent of, in partition, sec 394 168
- On undivided interest, effect of partition, sec 394. 168
- How preceeds of encumbered property applied, sec. 396 168
- Holder of having other securities power of court over, sec. 397 168
- Of transcript of judgment of probate court filed in district court, sec. 710 244
- Of transcript from justice's court, sec 800 266
- Of judgment obtained against decedent, sec 163 314

PAGE.

LIEN
- Of judgment against administrator, sec 161 313
- Lands sold by executor or administrator subject to sec 217 329
- Holder of, may buy real estate of deceased, sec 218 330
- Against property of estate, when paid, sec 273. 341
- Of costs in suits by minor heirs, sec 562 401
- Of judgment for criminal offence, sec 463 489
- On property of sureties on recognizance, sec 464 489
- Of attorney for fees, sec. 116 623
- For money borrowed by railroad company, sec 691 816
- Upon dams and reservoirs for costs of trials, sec 991 915

LIENS
- On homestead of decedent, how satisfied, sec. 141 307
- Of mechanics and others to secure labor, expense, materials, etc, secs 1370-1394 1029
- Account, description to be filed with recorder, sec 1372 1030
- Duty of recorder and abstract of liens and fees for same, sec 1373 1030
- Extent of lien on lots and lands, secs. 1374, 1375 1030
- Subsequent liens filed in 30 and 60 days, effect of, sec 1374 1030
- Of mechanics, etc., precede mortgages or liens, when, sec 1374 1030
- Extent of on buildings and improveprovements, sec 1376 1031
- Enforced in district court, sec. 1377 1031
- Pleadings practice and process, sec 1378 1031
- Parties to suits, who made, secs 1379-1380 1032
- Trial, judgment and costs, secs 1381-1384 1032
- Judgment against property, sec. 1383 1032
- Same against debtor and afterwards property, sec. 1384 1033
- Execution, proceedings thereon and conveyance sec 1385 1033
- Limitation of, sec 1386 1033
- "Owner of Property" defined, sec 1387 1033
- Satisfaction of, how made and recorded and fee for, sec 1388 1033
- Liability of creditor for non-satisfaction, sec. 1390 1034
- Who considered sub-contractors, sec. 1391 1034
- Relief of claimants under Idaho act, sec. 1392 1034
- For keeping animals, etc., sec. 1394 1035

LIFE INSURANCE COMPANIES—ASSESSMENT.
- May transact business by complying with this chapter, sec. 603 785
- Majority of incorporators must be citizens of this territory; age of members limited, sec. 604 785
- Territorial auditor to issue certificate, sec 605. 786
- May hold and dispose of real and personal property, sec. 606 786
- Number of directors, sec. 607 787
- When assessment is made must state object, sec 608. 787
- Penalty for falsely certifying, sec. 609 787
- How surplus funds invested, sec. 610 788
- Not subject to laws governing general insurance companies, sec 611 788
- Territorial auditor may employ accountant to verify statement, sec 612 789
- Territorial auditor to examine into financial condition, sec. 613 789
- Penalties for non-compliance, sec. 614 789

PAGE.

LIFE INSURANCE COMPANIES—ASSESSMENT.
  Penalty for non-compliance of officers of company, sec. 615. 790
  Date of making first statement, sec. 616. 790
  When license to transact business to issue, sec. 617 791
  Fees to be paid territorial auditor; duties of territorial auditor, sec. 618 791

LIMB.
  Disabling, punished, sec. 45 509

LIMITATIONS, STATUTE OF.
  Of civil actions, sec. 28 65
  Recovery of real property, sec 29 65
  Recovery of interest in real property, sec 30 66
  Of action after entry upon real estate, sec. 31. 66
  Presumption, where legal title to real estate established, sec. 32 66
  Adverse possession under written instrument, sec 33 66
  Same, under written title, what deemed, sec 34 66
  Adverse possession by occupancy, sec 35 67
  Possession without written title, sec. 36 67
  Possession of tenant, sec 37 67
  Death not to affect possession, sec 38 67
  Persons not affected by, sec 39 67
  Recovery of mining claims (Lode claims excepted), sec. 40 68
  Actions not concerning real property, secs. 41-55 68
  Upon judgment or written instrument, sec. 41 68
  For trespass or fraud, sec. 42 69
  Against officers, sec 43 69
  Upon unwritten contract, sec. 44 69
  For assault, libel, false imprisonment, etc., sec. 45 69
  For statutory penalty, sec. 45 69
  Against banker or trust company, sec. 46 69
  In cases not mentioned, sec 47. 69
  Open and current accounts, sec. 48. 90
  Statute applies to territorial actions, sec. 49 70
  As to party absent from territory, sec. 50 70
  In case judgment reversed, sec 51 70
  Injunction or statute stops, sec. 52 70
  Effect of new promise, sec. 53 70
  Effect of partial payment, secs. 53, 54 70
  Where cause arose out of territory, sec 55 70
  What stated in plea, sec 105 86
  Of action against boats, sec 209 111
  Of action on cause arising out of territory, sec. 538 201
  As to contest of will, sec. 36 283
  Of claims against estates, secs 150-158 310
  On rejected claims, sec 155 313
  Vacancy not included in administration, sec. 158 313
  To recover estates sold by executor or administrator, secs. 221, 222 330
  As to order of sale by guardian, sec 389 370
  Of action on guardian's bond, sec 404 374
  For recovery of property sold by guardian, sec. 405 374
  Of rights of aliens to succession, sec. 553 400
  Murder and manslaughter, sec 37. 410
  Penalty not exceeding ten dollars, sec. 38 410
  Misdemeanors, sec. 39. 410
  Absence from territory, sec. 40. 410
  What time not included, sec 462 489
  Of actions for injuries causing death, sec 982 912
  Of suits to enforce liens, sec 1386 1033

PAGE.

LIQUORS
  Sale of, near camp meeting, sec 152 541
  Same, to Indians or half-breeds, sec 160 544
  Adulteration of, sec 177 549
  Furnishing to soldiers, secs 188-190 552
  Soldiers obtaining by misrepresentation, secs 189, 190 552
  See Local Option.

LIQUOR DEALERS.
  See Licenses

LIS PENDENS
  Notice to be filed, sec 76 75

LIVE STOCK
  Taxation of See Taxes
  Possession under mortgage, how acquired, sec 224 114
  How taken under process on ranges, secs. 223-228 113
  Time attachment holds good limited, sec 225 114
  Duties of county recorder, to record attachment, sec 226 114
  Penalty for selling stock which has been attached, sec 227. 114
  How a subsequent writ shall be served, sec. 228 115
  Railroad company liable for damages, sec 713 826
  Duty of owner, schedule of valuation of stock, sec 274 827
  Duties of railroad company, sec 715 828
  Stock purposely driven upon the railroad track, sec 716. 829
  Possession of carcass and preservation of hide, sec. 717 829
  Penalty for false oath, sec. 718 829
  Duty of railroad companies to adopt precautions against fire, sec. 7119. 830
  Station in each county to be designated and book to be kept describing stock killed, sec 720 830
  Penalty, sec 721 830
  Affidavit of ownership and value to be made, sec 722 831
  Company may deposit value of animal, sec 723 831
  Penalty for driving animals upon track, sec 724 831
  Penalty for making false affidavit, sec. 725 832
  Company may skin animal and have carcass and hide, sec 726 832
  Rights may be enforced by civil action, sec 727 832

LIVERY AND FEED STABLES
  See Licenses

LOANS.
  How affected by county commissioners, sec 796 856
  Interest on, secs 1236, 1237 991

LOCAL OPTION
  Election to be ordered upon application of one-third of the voters of any county, sec 1395 1035
  Notice of election; regulations; qualifications of voters, sec 1396. 1036
  What shall be written or printed on ballots, sec 1397 1036
  Duty of judges of election and county commissioners; contests, sec 1398 1036
  No election oftener than once in two years, sec 1399 1037
  If majority vote "against sale," dealing in intoxicating liquors prohibited, sec. 1400 1038
  Law applicable, sec. 1401 1038
  To what sales not applicable, sec 1402 1038
  General election law applicable, sec. 1403 1038
  Penalty for violation, sec. 1404 1038

PAGE

LODGES
See Corporations, secs. 670-676 805

LODGING HOUSES
See Licenses

LODES
See Mines

LORD'S DAY.
Places to be closed on, sec 1406 . 1039
Gaming prohibited, sec 1407 1039
Penalty for violation, sec 1408 1039
Justices of peace, jurisdiction, sec 1409 1039
Fines paid county for school fund, sec 1410 . 1039

LOTTERY
See Licenses

LUMBER.
Burning or injuring, sec 218 561

LYCEUMS
See Corporations, secs. 670-676 805

MADISON COUNTY
Killing buffalo or bison prohibited, sec. 270 580
Act creating and fixing boundaries, sec 733 834

MAGISTRATE.
Disobedience of, when contempt, sec 584 210
Duty of, in case offence threatened, secs 14-24 406
May command arrest, when, sec 70 418
Duty as to arrest and examination of offenders, secs 77-116 419
Endorse amount of bail, sec 81 420
Duty as to certifying warrant and summoning witnesses, sec. 82 420
Duties when persons arrested without warrant, brought before, secs 80 90 421
To commit offender, and other duties, secs 88, 89 421
May associate himself with another, sec 104 423
To certify and return examinations and recognizances, sec 105 423
To transmit papers to clerk of court, sec. 110 424
Duty in case examination waived, sec 111 424
Duty as to excluding witness, sec 113 425
Duty when defendant held, sec 114 425
Form of order in such case, sec 115. 425
Form of order when defendant discharged, sec 116 . 425
Power of, to admit to bail, sec 240 449
Duty as to disposition of stolen property, 436-443 . 485
Warrants need not be under seal, sec 444 486
Fines to be paid to county treasurer, sec 522 498
Penalty on failure, sec 523 498
Concealment of knowledge of crime from, punished, sec. 13 502

MAIL
Clerk may transmit summons and other papers by, sec 76 . 78
Mileage in such case, sec 76. 78
Prepayment of costs in such case, sec 76 . 78

MALICE.
Express defined, sec 19 505
When presumed to exist, sec 20 505

MALICIOUS DEFAMATION.
Punished, sec. 154 541

MALICIOUS INJURY.
Of property, sec. 216 560

PAGE

MALICIOUS INJURY
Of real estate, sec 217 . . . 561
Of lumber, rafts and water craft, sec. 218 . 561
Of bridges, acqueducts, etc , sec 219 561
Of public jail, sec 220 561

MALICIOUS MISCHIEF
To animals, secs 214, 215 560
To property, secs 216-222 . 560
By setting fires, sec 221, 222.. 562
Inoculating disease, sec. 223 . 562

MALICIOUS PROSECUTION, secs. 27-29 . . 506

MANDAMUS.
Writ of, secs 565-578 . .. 206
Who may issue writ, sec 566 206
Cases where issued, sec 567 207
Nature of writ, sec. 568 . 207
Where partition made without notice, sec 569 207
The defence, sec 570 . 207
Trial by jury, sec 571 207
Plaintiff not included by answer, sec. 572 208
Motion for new trial, sec 573 208
Copy of verdict, sec. 574 . 208
Of the hearing, sec 575 . 208
The judgment, sec 576 208
Service of writ, sec 577 208
Disobedience of writ, penalty, sec 578 . . 208
Writ, return and hearing, when had, sec 583 . 209

MANDATE
See Mandamus

MANSLAUGHTER.
Limitation of action, sec 37 410
Defined, secs 26, 37, 40 506
Voluntary, defined, sec 2 506
Involuntary, sec 28 . 506
Punishment for, sec. 29 506
Year and a day, defined, sec. 30 . 506
Place for trial, sec 41 506

MANUFACTURING
See Corporations

MANUFACTURER
See Licenses

MARK.
See Brands and Marks

Included in word signature, sec. 539 201
Same, how witnessed, sec. 539 . 201
For signature, when valid, and to be witnessed, sec. 1970 1207

MARKS AND BRANDS
Altering, defacing, etc , sec 86 . . 519

See Brands and Marks.

MARRIAGE.
Not to abate action, sec. 22. 63
Proof of declaration of deceased person as to, may be made, sec 642 226
Of minor terminates guardianship, sec 357, p 363, sec 401 . 274
Of woman against her will, sec 55 511
Falsely personating another in, sec 117 . 531
Proof of, in bigamy, sec 155 543
Of unmarried to married person punished, sec 156 . . 545
Incestuous, void, sec 161 ... 545
Promise, agreement, etc., in consideration of. when void, sec 223 . 652
If null, issue illegitimate, sec 536 397
Marriage a civil contract, sec 1411 1040
When marriage shall not be contracted, sec 1412 1040
Who may solemnize marriages, sec 1413 1040

PAGE.

MARRIAGE.
License must be obtained, sec. 1414.. 1040
Consent of parent or guardian of minor, sec. 1415 1041
What license shall contain, sec. 1416 1041
When license refused, sec. 1417 1041
What evidence clerk may require, sec. 1418.............. 1041
Duty of person solemnizing the marriage, sec. 1419.............. 1041
Fee of clerk, sec 1420 1042
Penalty for violation by officiating person or clerk, sec. 1421 1042
Penalty for misconduct of officiating person, sec. 1422 1042
Want of jurisdiction of person officiating, defect of, sec. 1423 1042
Certificate or copy prima facie evidence, sec. 1424 1042
Marriage legitimatizes children, see 1425.. 1042
Minister, etc., shall give certificates, sec. 1426...... 1042
No form of ceremony required, sec 1427 1043
Validity of marriage contracted without Montana, sec 1428 1043
Fines for benefit of common schools, sec. 1429....... 1043

See Divorce.
See Married Woman.

MARRIED WOMAN.
When may sue alone, sec. 7....... . . 61
Right to defend suit, sec. 8 61
Statute of limitations affecting, sec. 39 67
When not to testify against husband, sec. 650 230
May be executrix of will, sec 47.... 288
May be administratrix, sec. 60....... 290
See Wills, secs 432-473............. 380
May dispose of separate property by will, sec. 485 380
Descent of property on decease of, sec. 550...... 399
Recognizance as witness, sec. 101 423
When deemed not to have committed crime, sec. 6 501
Husband punished for crime of, sec. 7. 501
Marrying again, penalty, sec. 536 543
Adultery of punished, sec. 161 545
Real estate of, how conveyed, sec. 254 660
Acknowledgment of conveyance by, secs. 255, 256, 257... .. 660
Non-resident need not join in conveyance, sec. 286...... 666
Separate property exempt from husband's debts, when, sec. 1432 1044
As sole trader, secs 1433-1438 1044
Same, trade in own name and account, sec. 1433 1044
Declaration as sole traders, requisites of and to be recorded, sec. 1434. 1044
Sole traders, rights and liabilities, sec. 1435 1044
To maintain children, sec. 1436....... 1044
Restrictions as to amount of business, sec. 1437. 1045
Husband not liable for debts, sec. 1438.... 1045
Legal identity protected, sec. 1439 1045
Conflicting laws repealed, sec. 1440 1045
Takes effect from passage, sec. 1441 .. 1045
Her services presumed to be on her separate account, sec 1442 1045
May be executrix, etc , sec 1443 1045
May sue and be sued as if sole, sec 1444 1045
Husband not liable for her debts, sec. 1445 1046
Liability for contracts as to separate property, sec. 1446 1046
May make a will, limitations, sec. 1447 [illegible]
May make [illegible] sec. [illegible] [illegible]

MARRIED WOMAN
May contest husband's will, sec. 1449 1046

MARSHAL.
Of territory or city may attach boat, sec 215 112
To assist in canvassing returns of election for delegate, sec 1034 .. 931

MASONIC LODGES.
See Corporations.

MASTER.
Of boat, contract by, sec 206. 111

MASTER IN CHANCERY.
Divorce case may be referred to, sec. 1003.. 920

MAYOR.
May appoint force to keep the peace, when, sec. 18. 406
Power to preserve peace, sec. 20. ... 407

MAYHEM.
Defined and punished, sec. 45 509
Assault to commit, sec. 59 511
Burglary to commit, secs. 73, 74. .. 515

MEAGHER COUNTY.
Created and boundaries of, sec 736 . 836

MEASURES.
See Weights and Measures

MEAT.
Sale of diseased, sec. 176. 549

MECHANICS.
Property of, exempt from execution, sec 321 145
Liens of. See Liens.

MERCHANTS.
See Licenses.

MEDICINE.
Sale of adulterated, sec. 181... 551
Prescribing poisonous, sec. 182 .. . 551

MEMBER OF LEGISLATURE.
Bribery of, secs. 111-113 529

MEMORANDUM.
Of costs, delivered to clerk, sec. 507 . 191
Of sale at auction, sec 225.. 653

MEMORIALS
See Joint Memorials.

MENACE.
Crime committed under, secs. 10, 11 501
By written communication, sec. 64 512
To juror, sec 130 635
Of voter, sec. 1063.... 939

MILEAGE.
Of county commissioners, sec. 755. 844
See Fees.

MILITARY COMPANIES.
See Militia.

MILITARY STORES.
See Arsenals.

MILITIA.
Citizens may organize into companies, regiments and batteries, sec 1451 1047
Commander-in-chief and officers of his staff, sec 1452.... . 1047
How orders distributed, sec 1453 . 1048
Duties of officers, sec 1454 . . 1048
By-laws and rules of companies, sec. 1455 1048
Whole number companies limited, sec. 1456 1048

PAGE,

MILITIA.
Election of officers and commissions, see 1457. 1048
Members to take an oath, sec 1458. 1049
How called into service, sec. 1459 1049
How armed and drilled, sec 1460 1049
Minimum days for exercise and drill, sec 1461 1049
Security given for arms, sec 1462 1049
Compensation when in service, sec 1463 1050
Compensation for use of necessary animals, sec 1464 1050
Misappropriation of public property, sec 1465 1050
Uniform, sec. 1466 1050
How certain expenses paid, sec 1467 1050
Dues and fines, how collected, sec 1468 1051
How members discharged, sec 1469 1051
Resignations, sec. 1470 1051
Penalty for not providing suitable uniform, sec. 1471 1051
Inspection, amount to be received by each company annually, sec. 1472 1051
Drill, target practice and encampment, sec. 1473. 1052
Exempt from jury service, sec 1474 1052
Report of adjutant general, sec 1475 1052

See Arsenals.

MILLERS
See Toll for Grinding Grain.

MILL
Owner failing to account for ore produced, sec 205. 557

See Toll for Grinding Grain

MILLS AND MILL-DAMS
Injuring or obstructing, sec 162 546
Malicious injury to, sec 219 561

MINERALS
Proceeds of, not accounting for, penalty, sec. 205 557

MINES
Location of quartz lodes, secs 1477-1482 1054
Declaratory statement and record of, sec. 1477. 1054
Vein and one wall must be discovered, sec. 1479. 1054
Extent of claims, sec. 1480. 1054
Prior claims may be extended, sec 1481. 1055
Penalties for obliterations of corners or notices, see 1462 1055
Rights of way by working, etc., secs 1495-1507 1058
Annual statement of yield and expenses, sec. 1791 1150
Same, what allowed in, sec 1792. 1151
Tax on net proceeds, how levied and collected, sec 1793. 1151
Penalty for neglect as to statement, sec. 1794 1151
Mining claims exempt from direct taxes, except for government price, sec. 1795 1151
Buildings, machinery, etc., not exempt, sec 1795 1151
Assessor authorized to examine books, etc., of owners etc. of, sec. 1795 1151
Equalization of assessment, sec. 1795 1151

See Mining Claims.

MINES AND MINING CLAIMS.
Limitation for recovery of lode claims accepted, sec [illegible] [illegible]
Proof admitted concerning, sec [illegible] [illegible]
Sale of property of decedent in, secs [illegible] [illegible]

PAGE

MINES AND MINING CLAIMS
Judgment for criminal offence, lien of, secs 463-465 489
Costs in case of adverse claim, sec 367 160
Orders for inspection of, sec. 376 162
Discovery of lode to record declaratory statement within twenty days of discovery, sec 1477 1054
Records of mining claims heretofore discovered, sec 1478. 1054
What entitles party to record, sec 1479 1054
Extent of location, sec 1480. 1054
Extent of lode discovered and recorded prior to passage, sec 1481 1055
Penalty for removing stakes or destroying notices, sec 1482 1055
What course to pursue to prevent forfeiture of claim, sec 1483 1055
Takes effect from passage, sec 1484. 1056
Fee of county recorder for filing, sec 1485 1056
Certified copy of affidavit to be admitted in evidence, sec 1486 1056
Location of mining tunnel to be recorded, sec 1487 1056
Person pre-empting tunnel to have three hundred feet on each side, sec 1488 1056
Right of way through other claims, sec 1489 1056
To run one hundred feet on tunnel within one year, sec 1490 1057
Pre-emptor's right for ore yard, sec 1491 1057
All mining district records to become county records on being deposited in recorder's office, sec 1492 1057
Duty of district recorder to deposit records in county recorder's office, sec. 1493 1057
Penalty for refusal of county recorder to receive records, sec 1494. 1057
Right of way over and across the land of others, sec 1495. 1058
For convenience of working owner of mining claim to have right of way for ditch, tunnel, etc., see 1496 1058
Petition to judge for right of way, see 1497. 1058
Citation to require appearance of parties, sec 1498 1059
Hearing of petition and order and awarding right of way; appointment of commissioners to assess damages, sec. 1499 1059
Commissioners to examine and report, sec 1500 1059
Report may be set aside and other commissioners appointed, sec 1501. 1059
Upon payment of damages awarded petitioners entitled to right of way, sec 1502. 1060
Appeals from assessment of damages, sec. 1503 1060
Trial of appeal, sec 1504 1060
Rights of appellee upon giving bond, sec 1505 1060
When appellee to pay costs, sec. 1506 1060
Costs on appeal, tender of payment of damages, sec 1507 1060
Safety apparatus to be provided for mining shafts, sec 1508 1061
Penalty for violation, sec 1509 1061
Suit for damages may be maintained, sec. 1510 1061

See Corporations, Forcible Entry and Detainer.

MINING DISTRICT RECORDS
[illegible]

PAGE.

MINING DISTRICT RECORDS.
- Duty of district recorder and penalties, secs. 1493, 1494 1057
- Duty of county recorder and fees, sec. 1494 1057
- See Records, Mines and Mining Claims.

MINING TUNNELS.
- Record of location, sec. 1487 1056
- Rights acquired, sec. 1488 1056
- Rights of way, sec. 1489 1056
- Work on necessary, sec. 1490 1057
- Entitled to quartz or ore yard and limits thereof, sec. 1491 1057
- See Mines and Mining Claims.

MINISTER OF THE GOSPEL.
- Property of exempt from execution, sec. 321 145
- When not to be witness, sec. 650 230

MINOR.
- To appear by guardian, sec. 9 61
- Appointment of guardian in such case, sec. 10 61
- Statute of limitations affecting, sec. 39 67
- Service of summons upon, sec. 72 76
- Power of probate court over property of, sec. 707 244
- How summoned in justice's court, sec. 744 253
- Proceedings if named as executor, sec. 49 288
- Cannot be administrator, sec. 59 290
- Provisions for support of, secs. 133-139 305
- Appointment of guardian for, secs. 351-355 362
- Custody and tuition of, secs. 356, 357. 363
- Debts of paid out of estate, sec. 367 366
- Real estate of, how sold, sec. 367 266
- Management of estate, support and education of, sec. 369 366
- Inventory and accounts of guardian, sec. 372 367
- Sale of property of, secs. 376-390 368
- Non-resident, secs. 392-398 371
- Of unsound mind or non-resident, guardian for, secs. 416, 417 376
- Rules as to custody and appointment of guardian, secs. 419-421 376
- Authority and duty of guardian, secs. 421-423 377
- Inheritance by, etc., sec. 534 395
- May commence suit without advancing costs, secs. 562, 563 401
- Recognizance of as witness, sec. 101. 423
- Permitting to gamble, penalty for, sec. 241 572
- Penalty for furnishing liquor to, sec. 257 577
- Permitting to resort to saloon, penalty for, sec. 241 572
- See Guardian, Adoption.

MISCARRIAGE.
- By instruments or medicine, sec. 42. 508

MISCHIEF, MALICIOUS
- Secs. 214-223 560

MISDEMEANOR
- Justice failing to receive or pay over money, sec. 829 273
- Defined, sec. 4 404
- Prosecution for, how conducted, sec. 5. 404
- Jurisdiction of courts in, sec. 6 404
- Defendent need not be present when arraigned, sec. 200 441
- Issue may be submitted to court, sec. 276 456
- Defendant need not be present for judgment, sec. 363 471
- See Crimes.

PAGE

MISDEMEANORS.
- At common law, sec. 278 583
- Attempt to commit, sec. 285 584
- Limitation of action for, secs. 39, 40 410
- Of officer, impeachment for, secs. 41-43 412
- Removing corner stone, etc., of real estate, sec. 91 521
- Disclosure by grand juror, sec. 130 429
- Disclosing indictment before arrest, sec. 181 437
- Neglect of duty by officer, sec. 519 498
- Officer permitting escape of prisoner, sec. 127 534
- Justice or constable buying judgment, sec. 135 536
- Officer neglecting duties, sec. 139 537
- Granting rights of officer for reward, sec. 136 536
- Threats to accuse, sec. 137 536
- Failure to keep ditch or flume in repair, sec. 234 569
- Keeping open certain houses or games on Sunday, sec. 157 544
- Failure to repair toll road or bridge, sec. 233 568
- Marking, branding, or driving another's cattle, sec. 235 569
- Gaming house keeper permitting minors to gamble, sec. 241 572
- Not providing fire escapes to building, secs 250, 251 574
- Drifts, ditches, etc., near highway, sec. 255 576
- Dancing, or hurdy-gurdy house, sec. 256 576
- Sale of intoxicating drink to drunkard, sec. 257 577
- Neglect or refusal of officer, board or commissioner, to perform duty, secs. 266-269 579
- Fraud or oppression by officer, sec. 268 580
- Jurisdiction of courts as to, sec 269 588
- Killing bison or buffalo in certain counties, sec 270 588
- Auditor or treasurer failing to settle, sec. 124 626
- Using brand or mark of another, sec. 174 641
- Using trade mark or brand of another, sec. 177 641
- Butcher failing to record brand, etc., sec. 191 644
- Officer failing to perform duties, sec. 927 889
- Damage, etc., to property or corporation, sec 484 736
- Establishing illegal election precinct, sec. 1055 937
- Violating act concerning purchase and sale of votes, sec. 1068 941
- Illegal issue of territorial warrants, sec. 1131 961
- Under habeas corpus act, secs. 1200-1202 980
- Violating act concerning Lord's day, 1408. 1039
- Neglect of county commissioners as to poor, sec. 1624 1090
- Destruction or non-surrender of toll road, sec. 1858 1171
- Territorial secretary failing to furnish copies to printer, etc., sec 1632 1093
- Notary public exercising duties of office when disqualified, sec. 1574 1077
- Failure to repair, or obstructing road or bridge of corporation, sec. 1859 1171
- School officer failing in duties, sec. 1911 1191
- Insulting teacher in presence of school, sec. 1915 1191
- Disturbing school or school meeting, sec. 1916 1191
- Permitting swine to run at large, sec. 1998 1215
- Using weights and measures not inspected, sec. 2064 1233

PAGE.

MISFORTUNE.
Injury by, without intent, sec. 9 501
Not criminal, sec. 9, p. 501, sec. 37 507

MISSOULA COUNTY
Act creating and defining boundaries, sec. 730 833

MISTAKEN.
Limitation of action, sec. 42 69
Court may correct, in pleadings, sec. 116 88
In will, when corrected, sec. 497 390
Indictment not quashed for, when, sec. 171 436
In charging offence, effect of, sec. 310 462
In jurisdiction, effect in criminal proceedings, sec. 311 462

MITIGATION
In libel or slander, proof allowed, proof allowed, sec 107 86
How shown, in case of homicide, sec. 40 508

MITTIMUS
See Commitment.

MONEY
Deposited for bail, applied on judgment, sec 142 94
In litigation deposited by trustee, secs. 235, 236 117
Liable to execution, sec 319 144
Surplus on foreclosure disposed of, sec 359 158
Defendant arrested to recover, when, sec 746 254
Justice to receive and pay over, sec 829 273
Same, may require deposit for costs, sec. 830 273
Of decedent to be inventoried, sec. 121 302
Same, may be invested, when. sec. 272 341
Same, public administrator to return, sec. 343 358
Same, proceedings if embezzled or concealed, sec. 399 373
Deposited for bail, if case resubmitted to grand jury, sec. 211 442
Deposit for bail, in place of recognizance, sec. 250 450
Same, return of, secs. 263-452-458 488
Robbery defined, sec. 77 516
Embezzlement of, secs. 87-89, p. 579, sec 92 522
Larceny as bailee, sec 93 522
Conspiracy to obtain, sec 132 535
Circulating checks or tickets as, sec. 224 565
Attorney failing to pay over, sec. 107 621
Same, lien upon for fees, sec 116 623
County commissioners may borrow, and how, secs. 756-797 844
County treasurer to receive and pay over, sec. 891 880
Legal rates of interest upon, secs. 1236-1238 991

MONTANA LIBRARY
What constitutes the Montana library, sec. 1515 1064
Board of directors, sec 1516 1064
Librarian; apppointment and salary of, sec 1517 1064
Room and fixtures; arrangement of books, etc., sec. 1518 1064
Regulations, sec 1519 1064
Exchange of books, etc., sec. 1520 1064
To rent room, etc., sec. 1521 1064
Chairman and secretary of board, sec 1522 1065

PAGE.

MONTANA LIBRARY.
Historical apartment, sec. 1523 1065
Catalogues, sec. 1524 1065
Payment of freight, mail and express charges, sec. 1525 1065
Annual report, sec. 1526 1066
Exchanges, sec. 1527 1066
How books taken from rooms, sec. 1528 1066
Penalty for injuring books, etc., sec. 1529 1066
Payment of accounts, sec. 1530 1066
Annual appropriation, sec. 1531 1067
Deposite of official reports, sec. 1532 1067
Bond of librarian, sec. 1533 1067
Additional appropriation, sec. 1534 1067
Conflicting acts repealed, sec. 1535 1667
Employment and duty of janitor, sec. 1536 1067
Salary of janitor, sec. 1537 1069

MONTANA SCHOOL LAW.
Defined, sec. 1921 1191

MONTH.
Defined, sec. 202 647

MORTGAGE—REAL AND CHATTELS.
Where foreclosed, sec. 56 71
Appointment of receiver on foreclosure of, secs. 229-232 115
On homestead, when void, sec. 323 147
Right of redemption from sale under, sec. 342 151
Procedure to foreclose, sec. 358 158
Surplus money, disposition of, sec. 359 158
Partial foreclosure, sec. 360 158
Not deemed a conveyance and must be foreclosed, sec. 371 161
On property sold in partition case, sec. 402 169
Order for sale under, when stayed on appeal, sec. 427 175
Against estate of decedent, how proved in probate court, sec. 154 312
Executor or administrator to take, when, sec. 200 326
Of land of decedent sold subject to, sec. 217 329
Possession of range stock, how acquired, sec. 224 114
Holder of may purchase real estate of decedent, sec. 218 330
Class of as claim against estate, sec. 273 341
Satisfaction and discharge of, how entered, secs 271, 272 663
Certificate of satisfaction and record of, secs. 272, 273 663
Penalty for failure to satisfy, sec. 274 663
Railroad corporations may give, sec. 691 816
Liens take precedence of, sec. 1374-1376 1030
Requisite to validity of chattel mortgage, sec. 1538 1068
Acknowledgment, sec. 1539 1068
Filing of mortgage and duty of recorder, sec. 1540 1069
Limit of duration of mortgage, sec. 541 1069
Renewal of mortgage, sec. 1542 1069
Effect of filing affidavit, sec. 1543 1070
Rights of subsequent mortgagee, sec. 1544 1070
Fee for filing renewal and receipt, sec. 1545 1070
Mode of attachment of mortgaged chattels, sec. 1546 1071
Recorder's fees, sec. 1547 1071
Certified copy in case of loss of original, sec. 1548 1071
Extent of provisions of this chapter, sec. 1549 1071
Foreclosure, sec. 1550 1071

PAGE.

MORTGAGE—REAL AND CHATTEL.
Sheriff's fees, sec. 1551 1072
Satisfaction of mortgage, sec. 1552 .. 1072
Penalty for selling mortgaged chattels, sec. 1533 1072
Penalty for destroying, concealing, etc., sec. 1554 1072
Real and personal mortgage by incorporated company, sec. 1555 .. 1073

See Conveyances.
See Homestead.

MOTHER.
May sue for seduction of daughter, when, sec. 12 61
May sue for death or injury of child, sec. 13 62
Summons against minor may be served on, sec. 744 253
Entitled to guardianship, when, sec. 355, p. 363, sec. 419 376
May appoint guardian by will or deed, when, sec. 414 376
Inheritance by, sec. 534 395
Bastards inherit from, sec. 536 397
Exposing or abandoning child, sec. 57 511

See Parent.

MOTION.
To continue suit against representative or successor, sec. 22 63
To reduce or vacate bail, sec. 145 .. 95
To discharge attachment, sec. 200 109
Same, how opposed, sec. 201 109
To postpone trial, sec 253 121
When exceptions deemed taken, sec. 293 134
For new trial, how made, sec. 297 135
Same, made upon affidavit, sec. 298 .. 135
Upon insufficiency of evidence, sec. 298 135
Same, when to be heard, sec. 299 137
Stay of proceedings, sec. 300 138
For order to survey land in litigation, sec. 369 160
To vacate award, sec. 478 187
To modify or correct award, sec. 479. 188
Definition of, sec. 482 188
When made, and notice, sec. 483 189
Of notice in writing, sec. 484 189
To transfer suit, sec. 455 189
Notice of, how served, secs. 487-490 .. 189
Upon whom served, sec. 488 190
Service by mail, secs. 489, 490 190
Service after defendant appears, sec. 491 190
Same, on non-resident, after appearance, sec. 492 191
To retax costs, sec. 509 194
For new trial in mandamus, sec. 573. 208
Same, duty of clerk if denied, sec. 574 208
To retax costs, effect of, secs. 509, 510. 194
To return cause transferred by probate judge, secs. 111, 112 299
To set aside indictment, secs. 205-210. 442
For nolle prosequi, sec. 306 461
For new trial in criminal action, sec. 356 468
In arrest of judgment, defined and for what causes granted, sec. 357 469
Same, effect of, sec. 359 469

MOTION BOOK.
To be kept, sec. 483 189
Notices recorded in, sec. 483 189

MULATTO.
Kidnapping or decoying, sec. 54 510

MUNICIPAL CORPORATIONS.
Petition and map, census, sec. 315 ... 677
Election, sec. 316 678
Canvas, notice of result, sec. 317 ... 678
Officers, their first election and terms, sec. 318 678
Additions, sec. 319 679

PAGE.

MUNICIPAL CORPORATIONS.
Fee of streets, etc., vested in the corporation, sec. 320 679
May annex adjoining territory, sec. 321 680
Same, sec. 322 680
Corporate powers, sec. 323 680
Mayor and council, sec. 324 681
Powers of city council, sec. 325 681
Style of ordinances, sec. 326 688
Parties to action, sec. 327 688
Process, sec. 328 688
Imprisonment, sec. 329 688
Prisoner may be compelled to work on streets, sec, 330 688
Appeals to district court, sec. 331 689
Fines paid to treasurer, sec. 332 689
Majority necessary to pass ordinance, sec. 333 689
Ordinances to be recorded, etc., sec 334 689
Ordinances, how proved, sec. 335 689
Ordinances, to take effect when, sec. 336 689
Yeas and nays in passage of ordinances, sec. 337 689
May establish and maintain free public libraries, secs, 1141, 1142 964
Limitation, sec. 338 690
Election precincts, sec. 339 690
Elections; qualifications of voters, sec. 340 690
Plurality necessary to election, sec. 341 690
Official oaths and bonds, sec. 342 690
Wards; first annual election; vacancies, sec. 343 691
Notice to person elected; oath of office, sec. 344 691
What office mayor and alderman may not hold, sec. 345 692
Quorum, election returns, rules, etc., of council, sec. 346 692
Contracts; election of officers, sec. 347 692
Officers of city of first class; of city of second class, sec. 348 692
Official bonds, sec. 349 692
Treasurer's bond, sec. 350 693
City treasurer is collector; duties, sec. 351 693
Private use of public money prohibited, sec. 352 593
Annual report of treasurer, sec. 353 .. 693
Warrants; how signed, sec. 354 694
Warrants paid in order of presentation; interest, sec. 355 694
Duties of city clerk, sec. 356 694
City marshal, duties of, sec. 357 695
Qualifications and duties of city attorney; salary; suspension, sec. 358 695
Chief of police, sec. 359 696
Chief of police snd policemen of city of second class, sec. 360 696
Chief of policee bond; duties and powers of, sec. 361 697
Chief of fire department, sec. 362 698
Council may abolish or consolidate offices, sec. 393 697
Who eligible to office of mayor, sec. 364 697
Who eligible to office of alderman, sec. 365 698
Removal from ward vacates office, sec. 366 698
Duties and powers of mayor, sec. 367. 698
President of council, sec. 368 699
Ordinance appropriating money, sec. 369 1699
Veto, sec. 370 699
Police magistrate, sec. 371 700
Salary of magistrate, sec. 372 700
Salary of mayor, sec. 373 700
Council to fix salaries, sec. 374 700
Other duties may be imposed on officer; tenure of office, etc., sec. 375 701

PAGE.
MUNICIPAL CORPORATIONS.
Reconsideration, sec. 376 701
Duties of county assessor, sec 377 701
Same, sec. 378 702
Levy and collection of taxes, sec. 379 702
Fiscal year, annual appropriation bill, sec. 380 702
Fines and costs, sec. 381 703
Powers of council, sec. 382 703
Organization and meeting of council, sec. 383 703
Classification, sec. 384 703
Corporate authority of cities, where vested, sec. 385 703
Corporate authority of towns, where vested, sec. 386 703
Election in towns, sec. 387 704
Officers of towns, how suspended, sec. 388 704
Justice of the peace, sec. 389 704
Duty of sheriff and constable, sec. 390 704
Provisions of this act applicable to towns, sec. 391 704
Special charter may be abandoned, sec. 392 704
Proceedings to abandon special charter and organize under this act, sec. 393 704
Vote for or against reorganization, sec. 394 705
If result of election for or against reorganization, proceedings sec. 395 705
Corporate property, sec. 396 706
Discontinuance of corporation, sec. 397 706
Same, sec. 398 706
Same, sec. 399 706
Same, sec. 400 706
Same, sec. 401 707
Payment of indebtedness, sec. 402 707
Collection of taxes of disincorporated city, sec. 403 707
By-laws and ordinances of reorganized city or town, sec. 404 707
Reorganization of town, sec. 405 707
Census to be taken, other proceedings, sec. 406 708
Complaint, statement in, sec. 407 708
May purchase or lease, cancel, etc., sec. 408 708
Same, sec. 409 708
Municipal bonds, sec 410 709
Same, sec. 411 710
Same, sec. 412 710
Redemption of bonds, sec. 413 711
Funding indebtedness, sec. 414 711
Limit of taxation, sec. 415 711
Transcript and payment of judgment, sec. 416 712
Auditing, sec. 417 712
No debt to be created except as herein provided, sec. 418 712
Eminent domain, sec. 419 712
What estates may be taken, sec. 420 713
All kinds of private property may be taken, sec 421 713
Compensation to owner, sec. 422 713
Eminent domain, how right of exercised, commissions, sec. 423 713
Valuation, appraisement, sec 424 714
Order of court, sec. 425 714
Payment of damages, sec. 426 715
City not required to give bond, sec. 427 715
Taxes for payment of damages, sec. 428 715
Vacation of street, sec. 429 715
Improvement of streets, etc., sec. 430 716
Collection and expenditure of street taxes, sec. 431 716
Sales for delinquent taxes, sec. 432 717
Work at expense of city, sec. 433 718
Repairs of sidewalks or gutters, sec. 434 718
No road district in city, sec. 435 718

PAGE.
MUNICIPAL CORPORATIONS.
Poll tax, sec. 436 718
Expenditure of poll tax, sec. 437 719
Contracts over $500, sec. 438 719
No repeal unless so set forth, sec. 439 719
Registration of voters, sec. 441 720

MURDER.
Jurisdiction as to trial for, sec. 36 410
Limitation of action for, sec. 37 410
Person indicted for, of what may be convicted, sec 184 438
Defined, sec. 18 504
Degrees of defined, sec. 21 505
First degree, what acts deemed, secs. 22, 23 505
Second degree, what acts deemed, secs. 22, 23 505
Verdict to designate degree, sec. 24 505
Killing in duel, when, secs. 22, 23 505
Punishment for, sec. 25 505
Death within a year and a day, sec. 30 506
Place of trial, sec, 31 506
Of bastard child, sec. 41 508
Assault to commit, sec. 59 511
Burglary, to commit, secs. 73, 74 515
When caused by perjury, sec. 110 529
Rescuing person charged with, secs. 121, 122 532

MUTE.
See Deaf, Mute and Blind Children.

NAME.
District court may change, sec. 1556 1073
Petition for change of name of person, duty of court, sec. 1557 1073
Petition for change of name of city, county, etc., duty of court, sec. 1558 1074
Costs, effect of change, sec. 1559 1074
Correction of in pleadings, sec. 116 88
Initial letters of christian name may be used in pleadings, sec. 118 89
When pleadings amended by changing, sec. 118 89
Fictitious or erroneous in indictment when real name to be inserted, sec. 187 438
To be declared by defendant in criminal cause, secs. 201-203 441

NATURE.
Crime against, punished, sec. 50 510

NEGLECT.
Relief from judgment taken through, sec. 116 88
Letters of executor or administrator revoked for, sec. 258, p. 339; sec. 283 344
To assist sheriff to secure criminal, sec. 374 472

NEGLIGENCE, Criminal, sec. 1, p. 403; sec. 9 404
Escape of person caused by, sec. 127 534

NEGOTIABLE INSTRUMENTS.
See Bills of Exchange and Promissory Notes.

NEPHEW.
Degree of kindred established, sec. 542 398
Inheritance by, sec. 534 395

NEGRO.
Kidnapping of, sec. 54 510

NEW TRIAL.
Defined, sec. 295 135
When granted, sec. 296 135
Causes for, sec. 296 135
Motion for, sec. 297 135
Notice of motion, sec. 298 135
Application for, how made, secs. 297, 298 135
Upon bill of exceptions, sec. 298 135
Upon statement, sec. 298 135

PAGE.

NEW TRIAL.
  Upon insufficiency of evidence, sec. 298. 135
  Hearing of motion, sec. 299 137
  Stay of proceedings pending, sec. 300. 138
  Bill of exceptions in case of, sec. 301. 338
  Appeals from order granting or refusing, sec. 421, p. 174; sec. 444 180
  Costs on discretion of court, when, sec. 500. 193
  In writ of mandamus, sec. 573. 208
  In justice's courts, secs. 820, 821 271

NEW TRIAL IN CRIMINAL CASE.
  Defined, sec. 352 468
  Effect of granting, sec. 353. 468
  In what case granted, sec. 354. 468
  Application for, sec. 355. 468
  Notice and motion, sec. 356. 468

NEW YEARS DAY.
  Judicial business prohibited, sec. 531. 199

NEXT FRIEND.
  See Minor.

NOISES.
  Disturbance by, secs. 141-146. 538

NOLLE PROSEQUI.
  When entered, sec. 306. 461

NON-JUDICIAL DAYS, sec. 531 199

NON-RESIDENT
  Limitations of actions against, sec. 50 70
  Where action against to be tried, sec. 59 72
  Corporation, how served, sec. 72. 76
  How served by summons, sec. 73. 77
  Party in partition, how served, sec. 382 165
  Same, proceeds of sale of interest, how invested, sec. 401 169
  Services of motions and notices upon, sec. 192 191
  To give security for costs, when, sec. 514 195
  How summoned in justice's court, sec 745 253
  Not to be executor or administrator, sec. 49, p. 288; sec. 55. 289
  Distribution of estate to, sec. 306 350
  Infants, guardianship of, secs. 392-398 371
  Property of unclaimed sold, and proceeds deposited, sec. 554. 400
  Proceedings to reclaim same and limitation, secs. 554, 555 400
  Committing offense by agent, etc., punished, sec. 31. 409
  County commissioners to assist, when, sec. 1618 1089

NON-SUIT.
  When may be entered, sec. 242. 118

NOTARY PUBLIC.
  Affidavits taken before, secs. 672, 673 235
  May take depositions, sec. 679 236
  May administer oaths, sec. 693. 241
  May take acknowledgments of conveyances, sec. 238 656
  Fees of, sec. 1091 949
  Appointment and term of office, sec. 1560 1075
  Powers of, secs. 1561-1565 1075
  Record of notices, etc., secs. 1562. 1075
  Credit of record and seal, 1563. 1075
  Seal, requirements as to, sec. 1564 1075
  Authorized to administer oaths and take proofs and acknowledgments, sec. 1565. 1076
  At end of term to deposit records with county clerk, sec. 1566. 1076
  Removal of residence from territory vacates office, sec. 1568. 1076
  Copies of records of given by district clerk, effect of and fees, sec. 1567. 1076

PAGE.

NOTARY PUBLIC.
  Official bond and commission and fee therefor, sec. 1572 1076
  Misdemeanors in office and penalties, sec. 1573 1077
  Effect of, demand of payment and notice by, sec. 1574. 1077
  Signature of to jurat, sec. 1575 1077
  Evidence of protest, sec 1576. 1077
  May compel attendance of witness, sec. 1577. 1078
  Who may administer oath to, sec. 1578 1078

NOTICE
  Contained in summons, sec. 68. 74
  Of suit pending, sec. 70. 75
  Of private statute when taken by court, sec. 106 86
  Of non-acceptance of bail by plaintiff, sec. 134. 93
  Of justification of bail, sec. 135. 93
  Of justification of bail in civil action, sec. 145 95
  Of application to discharge prisoner, sec. 148. 95
  Of appeal, sec. 422. 174
  Service of notice for discharge, sec. 149. 95
  To defendant in suit to recover personality, sec. 159. 97
  Of exception to sureties for injunction, sec. 176 101
  To defendant for injunction after answer, sec. 175 101
  Of exceptions to injunction bond, sec. 176. 101
  To debtors on attachment, sec. 186 105
  Of sale under attachment, sec. 194. 108
  To plaintiff to discharge attachment, sec. 199. 109
  By jury requiring information, sec. 267 127
  Of motion for new trial, sec. 298. 135
  Of sale of real estate under execution, sec. 332. 149
  Penalty for defacing same, sec. 333 149
  Same, for officer selling without, sec. 333. 149
  Of redemption from sheriff's sales, sec. 343. 182
  For claim for contribution, sec. 348. 154
  Of petition to revive judgment, sec. 347. 153
  Of contribution to debtor paying judgment, sec. 348. 154
  Same, lien of, sec. 348. 154
  For order to survey land in litigation, sec. 369. 160
  In suit for partition, sec. 380. 164
  To lien holders in partition, secs. 382-387. 165
  Of report of referee in partition, sec. 391. 167
  Of sale of real estate in partition, sec. 400. 169
  Of appeals generally, sec. 422 174
  Of exceptions to sureties on appeal, sec. 430. 176
  Of statement on appeal, sec. 432. 177
  Of appeal from probate court, sec. 450 181
  Of plaintiff accepting defendant's offer for judgment, sec. 471. 186
  Of motion when required, sec. 483 189
  In case motion in writing, sec. 484. 189
  On motion to transfer cause, sec. 485. 189
  Same to be in writing, secs. 487, 488. 189
  Service of, sec. 488. 190
  Service by mail, secs. 489-490. 190
  To adverse party or attorney, sec. 491 190
  On non-resident, sec. 492. 191
  To sureties on indemnifying bond, sec. 533. 200
  Time for service of, may be extended, sec. 536. 201
  When valid without title, sec. 537. 201

PAGE.

NOTICE.
  Of application for writ of error, sec 556.... 205
  Written, how construed in evidence, sec. 637.... 226
  For taking deposition in territory, sec. 679.... 236
  For taking deposition out of territory, sec. 683.... 238
  To perpetuate testimony, sec. 687.... 239
  Of appeal to be noted in justice's docket, sec. 805.... 269
  Of appeal or new trial in justice's court, sec. 821.... 272
  Of probate of will, sec 13.... 278
  Copy addressed to heirs, sec. 14.... 279
  Proof of service, sec. 16.... 279
  Of proof of lost will, sec. 37.... 283
  Of petition for administration, and contest thereof, secs. 63-66.... 291
  Of application for revocation, and appointment in same, sec. 71.... 292
  To administrator to give other security, sec. 81.... 293
  To creditors of decedent, secs. 147, 148.... 310
  Same, proof of, sec. 149.... 310
  Same, penalty for neglect, sec. 168, p. 315, sec. 280.... 343
  Of petition for sale of personal estate of decedent, sec. 177.... 319
  Of sale of mining interests of same, sec. 185.... 321
  Of sale of property by executor, or administrator, sec. 172, p. 318, sec. 196, p. 324, sec. 207.... 327
  Of private sale of real estate of decedent, sec. 198.... 322
  Notice to be proved before sale confirmed, sec. 205.... 327
  Of petition for decree to execute, contract of decedent, sec 237.... 334
  Of accounting by executor or administrator, secs. 265, 266.... 340
  Of settlement of estate, sec. 283.... 344
  Of application for partial distribution, sec. 285.... 345
  Of appointment of commissioners in partition, sec. 295.... 348
  When given by citation, sec. 320.... 353
  Description of real estate in, sec. 322 353
  Filing decree or order of probate judge for record, to be, sec. 316.... 353
  Against person having guardian, how served, sec 332.... 356
  To public administrator, of death, when given, sec. 335.... 357
  Of appointment of guardian, sec. 351 362
  Of hearing as to competency of person to manage estate, sec. 364.... 365
  Of proceedings for sale of property of ward, etc., 388.... 370
  Of guardian's application to invest proceeds of sale, sec 391.... 370
  Of application for guardianship, sec. 392,.... 371
  To guardian to give new bond, sec. 402.... 374
  Of impeachment of officer, secs. 44, 45.... 412
  To witness, etc., in criminal case, of removal, sec. 234.... 447
  Of hearing application to admit to bail, sec. 241.... 449
  For continuance of criminal case, sec. 272.... 456
  Of application for new trial in same, sec. 356.... 468
  Of appeal in same, sec. 398, p. 477, sec. 510.... 497
  To witnesses on continuance of same, sec. 520.... 498
  Destroying or defacing, etc., sec. 173 548
  Of penalty for fast driving over bridge, sec. 232.... 568
  To attorney of intention to strike name from roll, sec. 108.... 621

PAGE.

NOTICE
  Of lien of attorney for fees, sec. 116.... 623
  Of funds in treasurer's hands to pay warrants, sec. 130.... 628
  Of forfeiture of stock of corporation, sec. 453.... 727
  Of meeting of stockholders, sec. 468 730
  By company desiring to re-incorporate, sec. 486.... 736
  For condemnation of property, sec. 487.... 737
  Of removal of place of business by corporation, sec. 1490, p. 741, sec. 694.... 816
  Of sale of forfeited stock of same, sec. 682.... 810
  Of extra session of county commissioners, sec. 785.... 852
  Of election in regard to loan by same, sec. 797.... 856
  Of appeal from allowance by same, sec. 764.... 846
  Of election, sec. 1011, p. 724; secs 1013, 1014.... 925
  Same, to change county seat, secs. 978, 979.... 910
  Of contest of election, sec. 1043.... 934
  Of sale of goods for storage, etc., sec. 1983.... 1211
  Of sale of town lots, sec 2015.... 1221
  Of appeal by claimant of lot, sec. 2022 1223
  Of assignment by partners, sec. 1605. 1084
  Of dissolution of partnership, sec. 1607.... 1085
  By county physician of recovery of pauper, sec. 1616.... 1088
  To pauper to depart from county, secs. 1620, 1621.... 1089
  Of annual school meeting, sec. 1880.. 1180
  Of election to levy special school tax, sec. 1905.... 1189
  Of teachers' institute, sec. 1959.... 1205
  Inviting proposals for maintenance of poor, sec. 1613.... 1087

  See Liens.

NUISANCE.
  Defined, and actions for, sec. 361.... 159

  See Actions

  Punishment for, sec. 162.... 546
  Dangerous dam or reservoir declared, sec. 993.... 916

NUMBER.
  Words in singular to include plural, sec. 539.... 201

NUMBERS.
  How expressed in courts, sec. 526.... 199

NUNCUPATIVE WILL.
  Petition for proof of, sec. 9.... 278
  How probated, secs. 41, 42.... 284
  Same, contest of, sec. 43.... 284
  Limitations as to proof of, sec. 452.. 400
  Same, execution and probate of, secs. 449-452.... 399

OATH.
  On discharge from jail, sec. 151.... 95
  For injunction, sec. 174.... 101
  Of receiver, sec. 232.... 117
  Of juror, sec. 256.... 123
  Of referee, sec. 285.... 131
  Arbitrators may administer, sec. 475. 187
  Of arbitrators, sec. 476.... 187
  To itemized bill of costs and disbursements of suit, sec. 507.... 194
  To include affirmation or declaration, sec. 539.... 201
  Of witness upon trial, sec. 618.... 223
  Of person non-Christian, and affirmation, secs. 694, 695.... 241

PAGE.

OATH.
Of special administrator, sec. 98...... 296
Of appraisers of estate, sec. 124........ 302
Of commissioners in partition, sec. 294 347
Public administrator may administrator, when, sec. 349 360
Of grand jury, form of, sec. 126........ 429
Foreman of grand jury may administer, when, sec. 132.......... 430
False swearing, penalty, sec. 109...... 528
Territorial auditor and treasurer may administer, sec. 136................. 629
Of county treasurer as to county funds, sec. 149.................. 633
To include affirmation, sec. 202....... 647
Of appraisers to assess damages for corporations, sec. 487............. 737
Chairman of board of county commissioners may administer, sec. 761 846
County clerk and recorder may administer, sec. 840.. 868
Of witness at coroner's jury inquest, sec. 872.. 876
County treasurer may administer to person assessed, sec. 896........ 881
Penalty for refusing or falsely swearing as to purchase and sale of votes, sec. 1069 941
Notary public may administer, sec. 1565............. 1076
Of voter at school meeting, sec. 1880 . 1180
Secretary of territory may administer, sec. 1965. 1206
Assessor may administer in gathering statistics, sec. 1973.... 1208

OATH, OFFICIAL, OF.
Executor or administrator, sec. 74.... 292
Appraisers of estates, sec. 124. 302
Commissioners in partition, sec. 294.. 347
Grand jury, sec. 126.... 429
Attorney at law, sec. 165........ . 626
Commissioner of deeds, sec. 200. . .. 646
Appraisers of damages for corporations, sec. 487........ 737
County commissioners, sec. 754....... 844
Assessor, sec. 904... 882
Justice of the peace, sec. 929.......... 890
Jurors to examine dams and reservoirs, sec. 985.. 913
Refusal or neglect to take, vacates office, sec. 1046........ 935
Judges and clerks of election, sec. 1054.... 936
Commissioners for insane, sec. 1207... 983
All officers elected or appointed, sec. 1067, p. 939; sec. 1591................ 1081
Notary public, sec. 1578.. 1078
Territorial officers, sec. 1592... 1081
Of county superintendent of schools, sec. 1868 1176
Of school officers, sec. 1912. 1191

OATHS AND AFFIRMATIONS.
Who may administer, sec. 693 241
Of person non-christian, sec. 694.. ... 241
See Affirmations.

OBLIGATION.
Limitation of action, sec. 41, p. 68; sec. 44 69
Successors to property of decedent liable for, sec. 557 400
Joint and several, sec. 1296........... 1006

See Action, Civil.

OBSCENE LITERATURE.
Penalty for distributing or writing, sec. 196 554

OCCUPANCY.
Of real estate under written instruments, secs. 33, 34.. 66
Of real estate under claim not founded on written instrument, secs. 35, 36......................... 67

PAGE.

OCCUPANCY.
Of public domain, secs. 1657-1664 1102
Declaration of, sec. 1661 1103

OCCUPATION.
See Real Estate, Possession.

ODD FELLOWS.
See Corporations.

OFFENCE.
Committed on lake or river, etc., where tried, sec. 57 71
Second prosecution and jeopardy for, not allowed, sec. 10.............. 405
Where tried, sec. 7 404
Restraint of person charged with, sec. 12 405
Lawful resistance to, defined, sec. 13. 406
Proceedings for prevention of, secs. 13-29..... 406
Local jurisdiction of, secs. 30-36...... 409
When arrest for may be made without warrant, sec. 66 417
Arrest and examination for, local jurisdiction of, secs. 63-116.......... 417
In presence of magistrate, sec 70.... 418
Person having knowledge of, to complain, sec. 75 418
Jury may fix punishment, when, sec. 498................................ 495
Against the lives and persons of individuals, secs. 18-67.... 504
Against habitations, other buildings and other property, secs. 68-74 514
Against propery, defined and punished, secs. 77-95...... 516
Forgery and counterfeiting, secs. 97-108 524
Against public justice, secs. 109-139 528
Compounding, punished, sec. 129. 534
Conspiracy to commit, sec. 132. 535
Threatening to accuse of, sec. 187.... 536
Against the public peace and tranquility, secs. 141-154............ 537
Against morality, health and police, secs. 155-190.. 543

OFFENCES.
By cheats, swindlers and other fraudulent persons, secs. 197-211... 555
Fraudulent and malicious mischief, secs. 214-223 560
Miscellaneous, secs. 224-254........... 565
At common law, punished, sec. 278.. 583
Attempt to commit, punished, sec. 285.... 584
Failure to pay over unclaimed witness and jury fees, sec. 1107..... .. 954

OFFICE.
Usurpation of, act relating to, secs. 410-417........... 171
Duties of, enforced, and admission to compelled by mandamus, sec. 566. 206
Rights fo hold, how forfeited, sec. 60. 290
Forfeiture by embezzlement, secs. 88, 89.. 519
Right to hold, forfeiture by bribery, secs. 111, 112............... . . . 529
Holding over, after expiration of, punished, sec. 116.... 531
Removal from, inhumanity, sec. 115. 530
Taking or exercising without authority, sec. 133.... 535
Holder selling rights of, sec. 136 . .. 536
Effect of sentence for felony, etc., sec. 279.. 583
For recording brands, etc., sec. 168.. 639
Of corporation to be established, and notice given, sec. 694 816
Of county officers, where kept, sec. 911 886
When to become vacant, sec. 1046.... 935
Resignations of, to whom made, sec. 1045....................... 934

PAGE.
OFFICER.
Limitation of action for escape, of prisoner, sec. 45 69
Actions against, where tried, sec. 57. 71
Of corporation may verify pleadings, sec. 96 84
When may be arrested in civil action, sec. 121 90
Duty as to discharge of prisoner, sec. 152. 96
How to execute writ of replevin, sec. 159. 97
Return of same, sec. 171 100
To take charge of jury, sec. 265. 126
To cause survey of homestead, when, sec. 325 147
Selling property in execution without notice, secs. 332, 333 149
Not to purchase property sold in execution, sec 334 150
Re-sale by of property under execution, sec. 335 150
Liability of if purchaser refuse to take, sec. 336 150
Delivery of personal property sold, secs. 338, 339 150
To give certificate of sale of real estate, sec. 340 151
Penalty for illegal fee bill, sec, 509 194
May prosecute suits without bond or payment of costs, when, sec. 517 196
When not to testify, sec. 651 230
Witnesses, subpœnaed before required to attend, sec. 655 232
Affidavits may be taken before, sec. 672 235
Who may administer oaths, sec. 698 241
Duties on arresting person in civil case by order of justice of the peace, secs. 748-750 255
Duties in case of attachment from same, secs 761-766 257
To furnish itemized bill of fees, sec. 521 197
Inform public administrator as to property of decedents, sec. 338 358
To issue and serve writs for minors without costs in advance, sec. 502 401
Impeachment and removal of, secs. 41-62 412
Appointment and bond in such case, sec 58 414
Additional penalties for embezzlement, sec. 60 414
Appointment of in case of suspension, sec. 61. 414
Penalty for bribery of, secs. 112, 113 529
Stealing or falsifying records, penalty, sec. 114 530
Not surrendering office and property, sec. 116 531
Granting to another his official rights, sec. 136 536
Neglect of duty respecting venires and juries, sec 139. 537
Neglect of any lawful duty, secs. 266. 267. 579
Guilty of fraud or oppression, sec. 268 580
District court has jurisdiction, sec. 269 580
Of court, who deemed, sec. 109 621
Failing to settle with territory, penalty and proceedings, sec. 125 627
May sue in name of office, sec. 748 842
County to furnish books, blanks, etc., sec. 766. 847
Where and when to keep office open and books and papers open to public, sec. 911 886
Bond and oath of, sec 912 886
Deputy, oath of, sec. 913 887
Copies of records and papers evidence, sec. 925 889
Powers when acting for other officer, sec. 926 889
Penalty for failure to perform duties, sec. 927 889

PAGE.
OFFICER.
Accounts and settlements with commissioners, sec. 967 908
Neglect or refusal, sec. 968 908
Ten per cent. added on failure to pay money due, sec. 970 908
Suit against for failure, sec. 971 908
Re-examination and adjustment of accounts, sec. 972 909
To be elected at general election, and when, sec 1009 924
District, county and township, when term to begin, sec 1040 933
May resign, and to whom, sec. 1045 934
Official oath, additional form of, and by whom administered, sec. 1067 939
Post list of fees, sec. 1097 952
Return itemized list on process served, sec. 1098 952
Give itemized bill and receipt if required, secs. 1099, 1100 952
To pay treasurer all unclaimed witnesses' and jurors' fees, sec. 1103 954
To notify clerk of such payment, sec. 1104 954
To take receipt, sec. 1106 954
Fined for failure, sec. 1107 954
Auditing, not to acquire claim against county, sec. 1110 955
Refusing to obey writ of habeas corpus, sec. 1172 975
Exempt from serving as jurors, sec. 1305 1009
Not to deal in warrants or evidences of indebtedness, secs. 1579, 1580 1079
Penalty for same, secs. 1581-1585 1079
Treasurer to refuse to redeem warrants dealt in by officers, sec. 1581 1079
May transfer warrants issued to themselves for services rendered, sec. 1582 1079
Disbursing, to refuse payment, when, sec. 1583 1079
Vacancies in county offices, how filled, secs. 1589, 1590 1081
County to have bond recorded and evidence of copy, sec. 1587 1080
Oath and bond of appointee, sec. 1591 1081
Bonds of, to be recorded, sec. 1592 1081
Deliver books, etc., to successor, sec. 1594 1082
Violating act to prevent dealing in securities, punished, sec. 1584 1080
Penalty for refusal, sec. 1594 1082
Territorial, when salary to begin, sec. 1595 1082
Appointment and term of auditor and treasurer, sec 1596 1082
Journal containing laws to be sent to, sec. 1633 1093
Report of. See Reports.
Embezzlement by, penalty, secs. 80, 81 517
Penalty for obstructing or resisting, sec. 120 532
Exercising duties of, unauthorized, sec 133 535
Failing to issue venires, sec. 139 537
Duty as to keeping the peace, secs. 142, 153 538
Refusing to suppress riot, sec. 159 544
Penalty for receiving illegal fees, sec. 134 536
Failing to pay over to territorial treasurer, punished, sec. 125 627
Judgment against, how collected, sec. 751 843
Not to establish election precinct at Indian agency, etc., sec. 1055 937
To report to auditor concerning statistics, sec. 1972 1208

OFFICER IN CRIMINAL CASE.
May have assistance to quell riot, etc., sec. 17 406
May command the peace and arrest offender, secs. 14, 15, 16 406

PAGE.

OFFICER IN CRIMINAL CASE.
- May appoint force to keep peace, when, sec. 18... 406
- To report names of persons resisting, sec. 19... 407
- Of the peace, who designated as, sec. 20 ... 407
- Duties on complaint against offenders, secs. 21, 25 ... 407
- Duties, etc., as to arrest and examination of offenders, ch. VI ... 417
- To show authority for arrest, sec. 65 417
- When to arrest without warrant, sec. 66 ... 417
- Duty when arresting without warrant, sec. 68 ... 418
- When may use force in making arrest, sec. 72 ... 418
- Persons required to aid, when, sec. 73... 418
- Power of, in another county as to offenders, sec. 78. ... 419
- Grand jury to inquire into misconduct of, sec. 149 ... 432
- May make complaint of offence to probate court, sec. 476... 493
- Justified in killing assailant, when, sec. 35 ... 507
- Justified in executing sentence of death, sec. 36 ... 507
- May exhibit weapons when, sec 65 512
- Aiding or permitting escape of prisoner, penalty for, sec. 127... 534
- Refusing to arrest or receive person charged with crime, sec. 128 ... 534
- Failing to arrest parties and prevent duel, penalty, sec 153 ... 541
- Receiving fraudulent vote at election, punished, sec. 230 ... 566
- Neglect or refusal to perform duty, secs. 266, 267... 579
- Having prisoner in charge, to admit counsel, sec. 114 ... 623
- To take defendant before magistrate, sec. 80 ... 419
- To deliver warrant and recognizance to clerk, sec. 82. ... 420
- Making arrest in another county, duty of, secs. 83-85... 420
- Making arrest in, without warrant, sec. 89... 421
- Duty of on order of change of venue, sec. 227... 445
- To take charge of jury, sec. 316 ... 463
- To hold stolen property, sec. 437 ... 485
- Right to travel through other counties with prisoner, sec. 446... 486
- Not liable to arrest, sec. 447... 487
- May require assistance, sec. 447... 487
- May break open house to arrest, sec. 452... 487
- Corruption in selecting jury, cause of challenge, sec. 453. ... 488
- Penalty for neglect or refusal of duty, sec. 519. ... 498
- Duty of as to fines, etc., sec. 521 ... 498

See Usurpation of Office

OFFICERS—TERRITORIAL.
See Territorial officers.

OFFICIAL BOND OF.
- Executor or administrator, secs. 75-98... 293
- Guardian, sec. 358... 363
- Clerk of district and probate courts, sec. 192 ... 644
- Same, how sued on, sec. 193 ... 645
- County commmissioner, sec. 776 ... 849
- Probate judge, sec. 819... 862
- County clerk, sec. 829... 865
- Sheriff, sec. 849... 872
- Coroner, sec. 865... 875
- County treasurer, secs. 884, 885 ... 879
- County surveyor, sec. 898... 882
- Assessor, sec. 904... 883

PAGE.

OFFICIAL BOND OF.
- County and township officers, sec. 912 ... 886
- Justice of the peace, sec. 929... 890
- Constable, sec. 930... 890
- Neglect to execute vacates office, sec. 1046 ... 935
- Of commissioners for insane, sec. 1207... 983
- Of contractor for insane, sec. 1210... 984
- Record of territorial officers, sec 1586 1080
- Record of county officers, sec. 1587.. 1080
- Of officer appointed to fill vacancy, sec. 1592... 1081
- Superintendent of public instruction, sec. 1861... 1174

See Official Bonds.

OFFICIAL BONDS.
- Sureties on bonds to be bona fide residents and taxpayers, sec 914 ... 887
- Additional sureties may be required of county officers, sec. 915. ... 887
- Semi-annual examination to be made as to the sufficiency of sureties on bonds, sec. 916... 887
- Judges of the district courts to examine bonds of county commissioners, sec. 917... 887
- Record of examination to be made, sec. 918 ... 887
- Evidence as to sufficiency of bonds, sec. 919 ... 888
- Officer may be cited to show cause why new bond should not be given, sec. 920 ... 888
- Failure to give required bond to vacate office, sec. 921... 888
- Procedure of sureties to obtain a release, sec. 922... 888
- Liability of sureties defined, sec. 923.. 889
- Sureties liable for previous acts of principal, sec. 924 ... 889

OFFICIAL SEAL.
- Penalty for counterfeiting, sec. 106... 526

OLEOMARGERINE.
- Secs. 178-180, p. 550; secs. 191-195... 553

OLOGRAPHIC WILL.
- How proved, sec. 19. ... 280
  - See Wills, secs. 432-446 ... 380

OPIUM JOINTS
- Penalty for keeping, sec. 165... 547
- Lease forfeited by, sec. 167 ... 547
- Lien upon premises used as, secs. 166-169... 547
- Penalty for violation, sec. 170... 548

OPPRESSION
- Of prisoner, how punished, sec 115 530
- By member of board of commission, sec. 268 ... 580

ORDER.
- For trial of facts not at issue, sec. 3.. 59
- To substitute defendant in action, sec. 23. ... 63
- For publication of summons, sec. 73. 77
- For arrest of defendant, when, and by whom granted, and effect of, secs. 122, 123 ... 91
- For substitution of defendant, sec. 23 63
- For arrest in civil action, sec. 123... 91
- Same, how executed, sec. 127... 92
- Same, when made, and proceedings under, secs. 125-155... 91
- Same, how vacated, sec. 145 ... 95
- For discharge from jail, sec. 152... 96
- For injunction, sec. 172 ... 100
- Of sale on execution, sec. 316 ... 144
- May be excepted to, when, sec. 290 . 133
- Requiring judgment debtor to answer, sec. 350... 155

PAGE.

ORDER.
- Staying proceedings on motion for new trial, sec. 300 ... 138
- For survey of real estate in litigation, secs. 369-376 ... 160
- Of sale in partition, sec. 388 ... 166
- Same, what to direct, sec. 401 ... 169
- To arrest usurper of office or franchise, sec. 412 ... 171
- May be appealed from, sec. 444, p. 180; sec. 445, p 181; sec. 421 ... 174
- Reviewed on appeal, sec. 418 ... 173
- Made out of court without notice, how vacated, sec. 419 ... 173
- When appeal allowed from, sec 420 ... 174
- Appeal from in claim and delivery, sec. 425 ... 175
- For stay of proceedings on appeal from probate court, sec. 455 ... 182
- Definition of, sec. 482 ... 188
- Motion for, secs. 483-485 ... 189
- Enforcement of, sec 486, p. 189; sec. 546 ... 203
- Granted on writ of error, sec 556 ... 205
- For sale of attached property before judgment, sec. 541 ... 202
- Second application for, prohibited, sec. 551 ... 204
- How revoked or vacated, sec 552 ... 204
- Of condemnation in eminent domain, sec. 613 ... 221
- For examination of prisoner, as witness, secs. 665-666 ... 233
- To perpetuate testimony, sec 687 ... 239
- Powers of probate judge to make, sec. 707 ... 244
- For arrest of defendant in justice's court, sec. 746 ... 254
- In replevin, how made, sec. 760 ... 257
- Same, return of, sec. 766 ... 258
- For letters of administration, sec. 65 ... 291
- Requiring executor or administrator to give further security, sec. 86 ... 294
- Releasing sureties on bond of same, sec. 91 ... 295
- As to bond and oath of administrator to be recorded, sec. 93 ... 295
- Appointing special administrator, sec. 96 ... 296
- Transferring probate of will, sec. 110 ... 298
- Suspending powers of executor or administrator, sec. 113 ... 299
- As to homestead to be recorded, sec. 146 ... 309
- Showing notice to creditors of decedent, sec. 149 ... 310
- To show cause, on petition for sale of real estate of decedent, sec. 188 ... 322
- Same publication and service of, sec. 189 ... 322
- For sale of estate of decedent, secs. 176-198 ... 319
- Confirming sale of same, sec 203 ... 326
- For payment of debt of decedent, sec 277 ... 342
- For distribution of estate, secs. 287-293 ... 345
- Of probate court, what to contain, sec 314 ... 353
- Same, publication of, sec. 315 ... 353
- Notice of record of, sec. 316 ... 353
- Of probate court, may be appealed from, sec 324 ... 354
- Time allowed for same, sec. 325 ... 354
- For sale of property of minor, secs 376-398 ... 368
- Holding defendant on criminal charge, sec 115 ... 425
- Discharging same, sec. 116 ... 425
- For new grand jury, sec. 142 ... 431
- For recommitment of defendant released on bail, secs. 264-265 ... 452
- Designating amount of bail, sec. 261 ... 452

ORDERS,
- District judge may grant and discharge, in chambers, sec. 704 ... 243

PAGE.

ORDERS.
- Powers of probate court to grant, sec. 713 ... 245
- Considered personal property in case of larceny, sec. 81 ... 517
- Forgery, etc., of, punished, sec. 96 ... 523
- County, by whom signed, sec. 763 ... 846

ORDERS AND WARRANTS.
- May be called in by county commissioners, sec. 786 ... 854
- Duty of county treasurer as to payment, cancelling and record of, secs. 788-791 ... 854
- Notice of payment of, to be posted, sec. 793 ... 855
- Effect of notice on interest and priority of payment, sec. 793 ... 855
- To draw interest after registry, sec. 794 ... 855

ORPHANS.
- See Adoption.

OWNER.
- Of boat, contract by, sec. 206 ... 111
- When entitled to homestead, secs. 228-230 ... 148
- Death of, not to affect same. sec. 329. 148
- Right to sell or remove from same, sec. 328 ... 148
- Unknown, proceeds of partition invested for, sec. 401 ... 169
- Joint, evidence of declaration of sec. 642 ... 226
- Under chapter on liens, defined, sec. 1387 ... 1033

PANEL OF JURY.
- See Jury.

PARDONS, sec. 461 ... 489
- See Governor.

PARENT.
- May bring action for seduction, sec. 12 ... 61
- Same for death or injury to child, sec. 13 ... 62
- Entitled to guardianship of minor, sec. 419 ... 376
- May appoint guardian for minor by will or deed. sec. 1414 ... 376
- Same, power of, how superseded, sec 427 ... 378
- To support pauper child, sec. 1610 ... 1086
- Insulting, etc., teacher, punished, sec. 1915 ... 1191

PARK COUNTY, secs. 1-11 ... 1238
- See County Boundaries.

PARTIES.
- Plaintiff and defendant, defined, sec. 2 ... 59
- In civil action, who to be, sec. 4 ... 60
- Executor, administrator, or trustee, how may sue, sec. 6 ... 61
- If infant, to appear by guardian, sec 9 ... 61
- Joinder as plaintiffs or defendants, sec. 19 ... 63
- Joinder, when severally liable, sec. 20 ... 63
- Married woman, may sue and be sued alone, sec. 7 ... 61
- Who made defendant, sec. 16 ... 62
- Rights, jointly and severally, sec. 21 ... 63
- Death of, not to abate action, sec. 22. 63
- Changes of interest, etc., suit, how continued, sec. 22 ... 63
- Substitution of, secs. 22, 23 ... 63
- Right to intervene, sec. 24 ... 64
- How associates named as defend. sec 25 ... 64
- Power of court to determine controversy, sec. 26 ... 64

PAGE.

PARTIES.
When persons interested to be made, sec. 27 ... 64
In action to foreclosure of mortgage, sec. 358 ... 158
In suit for partition, secs. 377-382 ... 164
Rights settled in partition. sec. 384 ... 165
Court may order lien holders. etc., made, sec. 386 ... 166
Effect of judgement in partition upon, sec. 391 ... 167
How property distributed to, in partition, secs. 396-405 ... 168
Rights protected in partition, sec. 406 ... 170
How may bring appeal in supreme court to hearing, sec. 442 ... 179
Submission of agreed case, sec. 469 ... 185
Of arbitrations, etc., secs. 472-481 ... 186
In eminent domain, secs. 604-606 ... 216
Witnesses examined in presence of, sec. 618 ... 223
Rights of, not prejudiced, sec. 620 ... 223
Rights to all of evidence, sec. 626 ... 224
Intention, in agreement, sec. 636 ... 226
Examination of, sec. 668 ... 234
In justice's courts, secs. 740-742 ... 252
May object to pleadings in same, sec. 776 ... 260
Change of venue by, sec. 780 ... 262
Trial in absence of one of, sec. 786 ... 269
To be named in summons, sec. 68 ... 74
Names of, in complaint, sec. 85 ... 80
Must subscribe and verify pleadings, secs. 95, 96 ... 84
Of judgment between, secs. 238-243 ... 118
Either may bring issue to trial, sec. 252 ... 121
Challenge of jurors by, sec. 257 ... 123
Burden of proof on trial, sec. 262 ... 125
May ask instructions to jury, sec. 262 ... 125
Exceptions to same, how taken, sec. 262 ... 125
May waive trial by jury, sec. 279 ... 129
May submit written statement, sec. 280 ... 130
May agree on reference, sec. 283 ... 131
May object to referee, sec. 286 ... 132
Who to be, in suits under chapter entitled "Liens," sec. 1379 ... 1032

PARTITION.
Action for, where tried, sec. 56 ... 71
Of real property, secs. 377-409 ... 164
Who may bring suit, sec. 377 ... 164
The complaint, sec. 378 ... 164
Who need not be parties, sec. 379 ... 164
Notice of pendency of suit, sec. 380 ... 164
To whom summons directed, sec. 381 164
Unknown and non-resident parties, sec. 382 ... 165
The answer in, sec. 383 ... 165
Rights of parties tried and determined, sec. 384 ... 165
Partial or incomplete, sec. 385 ... 165
Proceedings as to lien holders, sec. 386 ... 166
Notice to lien holders, sec. 387 ... 166
Sales in, when authorized, sec. 388 ... 166
Duties of referees, secs. 389, 390 ... 167
Report of referees, sec. 390 ... 167
Action upon report, sec. 391 ... 167
Effect upon tenants, sec. 392 ... 168
Apportionment of costs, sec. 393 ... 168
Liens, how charged against shares, sec. 394 ... 168
Estate for life or years, how set off, sec. 395 ... 168
Proceeds, when estate encumbered, how applied, sec. 396 ... 168
Securities of lien holders, power of court over, sec. 397 ... 168
Distribution of proceeds, sec. 398 ... 169
Security for purchase money, sec. 462 ... 169
Sale of tenancy, sec. 403 ... 170
Estate of tenant, how determined, sec. 404 ... 170.

PAGE.

PARTITION.
Continuance for distribution, sec. 399 169
Notices and sales in, sec. 400 ... 169
Order for sale, requisites of, sec. 401 ... 169
Tenant unknown, protected, sec. 405 170
Contingent interests secured, sec. 406 170
Sale in, terms of, how made known, sec. 407 ... 170
Lots or farms sold separately, sec. 407 ... 170
Who not to purchase, sec. 408 ... 170
Guardian may purchase for infant, sec. 408 ... 170
What sales void, sec. 408 ... 170
Report of sale, sec. 409 ... 170
When order in regard to may be appealed, sec. 421 ... 174
Power of probate court over, sec. 1 ... 274
Commissioners to make, how appointed, secs. 294, 295 ... 347
Of real estate in different counties, sec. 296 ... 348
Of interests transferred by heirs, sec. 297 ... 348
How several shares set out, sec. 298 ... 348
Estate, how set off to one of several coparceners, sec. 299 ... 349
Parcel of real estate of greater value than share, how may be set off, sec. 300 ... 349
When property may be sold, sec. 301. 349
Notice to be given by commissioners, sec. 302 ... 350
Report of commissioners, sec. 303 ... 350
Copy of decree to be recorded, sec. 303 350
When commissioners need not be appointed, sec. 304 ... 350
Questions of advancement, how determined, sec. 305 ... 350
Publication, how made, sec. 315 ... 353
Decree, filing for record, notice to all persons, sec. 316 ... 353
Notices to be given by citation, sec. 320 ... 353
Same, how issued and served, secs. 317-321 ... 353
Description of property, sec. 322 ... 353
Rules of civil practice act to govern, sec. 323 ... 354
Appeal from probate to district court, sec. 324 ... 354
Attorney to represent parties, how appointed, sec. 328 ... 355
Service upon guardian sufficient, sec. 332 ... 356
Guardian may join in assenting to, sec. 371 ... 367
How descendants take in, secs. 532-543 ... 395

PARTNERS.
Judge or justice not to have, as attorney, sec. 550 ... 203
May petition for sale of mining interests of decedent, sec. 182 ... 321
Surviving, not to administer, sec. 55. 289
Estate of, how administered, sec. 229. 332

See Joint Debtors, Parnership.

PARTNERSHIP.
Receiver, appointment of, secs. 229-231 ... 115
Estate of decedent, how inventoried, sec. 120 ... 301
Interest of decedent in sale of, sec. 178 ... 319
Surviving partner, rights and duties of, sec. 229 ... 332
Personal property, how ownership of stated in indictment, sec. 185 ... 438

PARTNERSHIP, LIMITED.
May be formed, for what purposes, sec. 1597 ... 1083
Of whom to consist, sec. 1598 ... 1083
Certificate of, what to include, sec. 1599 ... 1083

Page.

PARTNERSHIP, LIMITED.
Same, to be acknowledged and recorded, sec. 1600 1084
Same, on renewal of partnership, sec. 1601 1084
Name in which conducted, sec. 1602. 1084
Capital stock not to be impaired, and liability, sec. 1603 1084
Assignment, when valid, sec. 1604 1084
Assent of creditors, and notice of assignment, sec. 1605. 1084
Suit by or against, how prosecuted, sec. 1606. 1085
Dissolution, how obtained, sec. 1607. 1085
Same, to be recorded and published, sec. 1607.... 1085
Special partners, rights of, sec 1608 1085

PARTY IN CIVIL ACTION.
Acts, declarations, or omissions of, may be given in evidence, sec. 642 226
Actions not to abate by death of, sec. 22.......... 63
Cannot be appointed receiver, exceptions, sec 231... 116
Court may add or strike out, sec. 116 88
Dying after decision, judgment against, sec. 305.... 139
Dying after judgment, execution in favor of, sec. 317...... 144
Disobeying garnishment, punishment, sec. 357 157
Deposit in court of money held as trustee, sec. 235 117
Examined as a witness, sec. 669 234
Execution in favor of, sec 312..... 142
Entitled to costs, when, sec. 495...... 192
Failing to change judgment on appeal, sec. 456. 183
How may prosecute and defend in justice's court, sec 737. 251
How named in pleading, sec. 118 . 89
How served with notice, secs 488-489......... 190
May ask for new trial, when, sec. 296 135
To give notice of same, sec. 298....... 135
May appeal, when and how, sec. 420 174
May appeal from probate court, when and how, secs. 445-454 181
May attend and examine witnesses, sec. 680...... 237
May bring case before court for argument, when, sec. 302......... 138
May demand jury in unlawful entry and detainer, sec. 720....... 247
May have depositions taken, sec 679 236
Must prove his own affirmative allegations, sec 641 226
May survey land in litigation, sec. 369. 160
Out of territory, limitation of action, sec. 50. 70
Non-resident, how served with notice, sec. 492 191
Postponing trial, shall consent to take testimony, sec. 254...... 121
Restrained from injury to property during foreclosure, sec. 372. 161
Refusing to testify, judgment against, sec. 671...... 235
Right to inspect instrument, sec. 99...... 85
Required to attend in case of change of venue, sec. 231 446
Successful in suit, to furnish itemized bill of costs, etc., on oath, sec. 507......... 194
Same, what to include sec. 508.. . . 194
Satisfaction of judgment, sec. 311.... 140
Unmarried female may be plaintiff, when, sec. 11............ 61
When an infant, proceedings in regard to, secs. 9, 10 61

PARTY IN CRIMINAL ACTION.
Injured, may be witness, sec 14 . . 502
Defendant may testify, sec. 15 . . 502

Page.

PASSION.
Irresistible, sec. 27......... 506

PATENT SAFE GAME.
Prohibited, sec. 208.... 558
Keeper of place of, punished, sec. 210 559

PATENTS.
For lands, record of, sec. 542 202
Destroying or defacing punished, sec. 90 521

PATRONS OF HUSBANDRY.
See Corporations.

PAUPERS.
See Poor.

PAWNBROKERS.
See Licenses.

PAYMENT.
Effect on limitation of action, secs. 53, 54................. 70
On redemption of real estate, sec. 344.... 153
To sheriff by debtor, sec. 352.......... 156
Of damages in eminent domain, secs. 611, 612........ 220

See Administration.

PEACE.
Disturbance of, penalty for, sec. 141 537
Two or more persons assembling to disturb, sec. 442... 538
Affray, sec. 143 538
Disturbing religious worship, sec. 146 539

PEACE OFFICERS.
Who declared to be, sec. 20........... 407

PEDDLERS.
Property of exempt from execution, sec. 321. 145

See Licenses.

PEDIGREES of Live Stock.
Making false, punished, sec. 80...... 613
False statement as to, sec. 81. 613

PENALTY.
See Fines and Penalties.

PEN D' OREILLE.
Appropriation for removing falls, sec. 1158 970

PENITENTIARY.
Keeper to return prisoner for new trial, sec. 455. 488
Fees for same, sec. 455. 488
Escape, or attempt to escape, penalty for, sec. 229 566
Warden, pay of for services in regard to, sec. 299.......... 670
Warden to certify as to insane convict, sec. 312........ 673

See Convict.

Hard labor and employment of, secs. 472, 473.......... 491
Contract for keeping convict in, sec. 288........... 667
Convicts may be kept in another state, secs. 291-297.......... 668
Clothing furnished discharged convict, sec. 301 670
Convict not to be removed from enclosure, sec. 300. 670
Convicts may be kept in county jails, secs. 303-307..... 671
To be visited by physician, sec. 306.. 671
Compensation of physician, sec. 307. 672

PERISHABLE PROPERTY.
Sold in attachment, sec. 192 107

PAGE.

PERJURY.
- One witness not sufficient to prove, sec. 616 ... 223
- False affirmation declared to be, sec. 695 ... 241
- Indictment for or for subornation, sec. 192 ... 439
- Defined and punished, sec. 109 ... 528
- Subornation of, sec. 109 ... 528
- Conviction and execution of innocent person by, sec. 110 ... 529
- False swearing, etc., in violation of election law, sec. 1064 ... 939

PERSON.
- Causing or employing another to cause death, action against, sec. 14. ... 62
- Interested may be joined as plaintiff, sec. 15 ... 62
- When may be made defendant, sec. 16 ... 62
- Interested, made party on his application, sec. 27 ... 64
- When arrest made for injury to, sec. 121 ... 90
- Execution against, secs. 313-316 ... 142
- Lawful resistance to offence against, defined, sec. 13 ... 406
- Same, what to include, sec. 456 ... 488
- Who incapable of committing crime, secs. 3, 4 ... 500
- When deemed guilty of crime committed by another, secs. 5, 7, 8, 11. ... 501
- Assault on punished, sec. 58 ... 511
- Assault with intent, etc., secs. 59, 60. ... 511
- Robbery of, sec. 77 ... 516
- Term defined in criminal law, sec. 281 ... 584
- Injuries to, causing death, liability and actions for, secs. 981, 982 ... 911
- Who may bring and limitation of, sec. 982 ... 912

See Actions, Civil.

PERSONAL PROPERTY.
- Arrest for concealing, etc., sec. 121 ... 90
- Action to foreclose mortgage on, sec. 358 ... 158
- Claim and delivery of, in justice's court. secs. 758-765 ... 256
- Concealed, duty of sheriff, secs. 168-169 ... 99
- County may purchase and hold, sec. 744 ... 842
- Same. may sell and convey, sec. 744. ... 842
- Charged with debts of decedent, sec. 171 ... 318
- How attached, sec. 186 ... 105
- How disposed of in distributing estate, sec. 308 ... 351
- In action to recover, how returned, sec. 161 ... 98
- Same, action and judgment for injury to, sec. 162 ... 98
- If claimed by third party, proceedings, secs. 170, 171 ... 100
- If replevied from officer and recovered, may be sold, sec. 163 ... 98
- Same, not to discharge replevin bond, sec. 164 ... 99
- Judgment for recovery of, sec. 303 ... 139
- Jury may be waived in trial of actions regarding, sec. 279 ... 129
- Jury to find value of, sec. 277 ... 129
- Limitation for action in trespass, sec. 42 ... 69
- Liable for debts of decedent, secs. 510, 511, 512 ... 392
- Levied upon, claimed by third party, sec. 320 ... 145
- Of decedent, sale of, secs. 174-224 ... 318
- Of intestate, to whom descends, sec. 532 ... 395
- On suit for taking, what officers may plead and what judgment to be, sec. 117 ... 88

PAGE.

PERSONAL PROPERTY.
- Partnership, how owner described in indictment, sec. 185 ... 438
- Proceedings of defendant to secure return, sec. 165 ... 99
- Proceedings to levy upon and sell, secs. 331-337 ... 148
- Several causes of action concerning, may be united, sec, 86 ... 80
- Stock of corporations deemed, sec. 455 ... 727
- Sale of, under execution from justice's court, secs. 802, 803 ... 267
- To be first taken on execution, sec. 313 ... 142

Taxation of. See Taxes.

- What exempt from execution, sec. 321 ... 145
- When lien of attachment accrues, sec. 204 ... 109
- What liable to execution, sec. 319 ... 144
- Wills of, how construed, sec. 529 ... 394

See Corporations, Mortgages, Stolen Property, Wills.

PERSONATING.
- Or falsely representing, sec. 117 ... 531
- Receiving money or chattels by falsely personating another, sec. 118 ... 531

Petition to perpetuate testimony, secs. 687-690 ... 239
- For probate of will, sec. 13 ... 278
- To contest will, sec. 30. ... 282
- For letters of administration with will annexed, sec. 46 ... 287
- For letters of administration, sec. 61. ... 290
- Same, notice of, sec. 63 ... 291
- Same, contest of, sec. 64 ... 291
- To revoke letters of administration and hearing of, secs. 70-73 ... 292
- For sale of property of decedent, secs. 174-175 ... 318
- For order of sale of property of minor, sec. 381 ... 368
- For change of venue of criminal cause, sec. 226 ... 445
- For condemnation of property for corporations, sec. 487 ... 737
- For writ of habeas corpus, sec. 1165 ... 974
- For award of right of way for development of mines, secs. 1497-1499 ... 1058
- For election to change county seat, secs. 978-980 ... 910

PHYSICIAN.
- When not to testify against patient, sec. 650 ... 230
- Prescribing while intoxicated, penalty for, sec. 182 ... 541
- Penalty for practicing medicine without certificate, etc., sec. 231 ... 567
- Exempt from serving as juror, sec. 1305 ... 1009
- Contract with, to furnish medicines for poor, sec. 1615 ... 1087

See Licenses.

PHOTOGRAPHER.
See Licenses.

PICTURE GALLERY.
See Licenses.

PLACE.
- Of trial of civil actions, secs. 56-65 ... 71
- Of trial of homicide, sec. 31 ... 506

PLAINTIFF.
- Affidavit by, for claim and delivery, sec. 157 ... 97
- Acceptance by, of defendant's offer to compromise, sec. 471 ... 186

PAGE.
PLAINTIFF.
Action in attachment, sec. 181. 103
Affidavit in case joint debtor not served, sec. 461 184
All persons interested joined, sec. 15. 62
Amendments to, pleadings. secs. 115-118 88
Costs allowed to, sec. 495-510 192
Complaint in action for libel, etc., sec. 107 86
Complaint of, in action for partition, sec. 378 164
Defined, sec. 2. 59
Demand in claim and delivery, sec 158. 97
Effect of judgment against in such case, sec. 197 108
Failing to appear, suit dismissed, sec. 242. 118
How and when may obtain attachment, secs. 181-182 103
How and when may dismiss action, sec. 242 118
How may have homestead set apart, sec. 325 147
Liability to, for same, sec. 189 106
Judgment for same, sec 194 108
May challenge jury, etc., secs. 267-364. 123
May demur or reply to answer, secs. 92-94 83
May examine bail on oath on justification, sec. 137 93
May have writ for possession of real estate, sec 17 62
May have summons issued, sec. 67 74
May make supplemental complaint, sec. 111 87
May order prisoner discharged, sec. 155 96
May oppose discharge of attachment when, sec. 201 109
May prosecute undertaking for release of attached property, sec. 196 108
Must pay or secure damages in eminent domain, sec. 609 220
May write several causes of action in complaint, sec. 86. 80
Notice by, as to credits liable for same, sec. 188 106
Name of, in execution book, sec. 315. 143
Notice by, of appearance before referee, sec. 387 166
Not granted continuance while boat is attached, sec. 216 112
Notice of justification of bail, sec. 135 93
One may sue for all, when, sec. 19 63
Of judgment for or against, sec. 239 118
Objections to bail, sec. 134 93
Pay costs in district court, when, sec. 700 243
Pleadings of, secs. 81-84 79
Proceedings, when only part of defendant's served, sec. 77 78
Right, in claim and delivery, sec. 156. 97
Rights of attachment, sec. 181 103
Rights of action against boat owners, sec. 221 113
Rights of, in suit concerning real estate, secs. 367-374 160
Rights of, in same, how tried, etc., sec. 384 165
Relief to, by judgment without answer, sec. 241 118
Security for arrest of defendant, sec. 123 91
Substitution of one for another, sec. 22 63
To have notice of application for discharge of prisoner in civil action, sec. 148, p. 95, sec. 156 99
To pay costs in case of tender, when, sec. 504 194
Title vested in eminent domain, sec. 613 221
Unmarried female may prosecute for seduction, sec 11 61
Undertaking for injunction, sec. 176. 101

PAGE.
PLAINTIFF.
United in suit for real estate, sec. 18. 62
Undertaking in such case, sec. 159 97
Undertaking in attachment, sec. 181. 104
When entitled to injunction, sec. 173 100
When entitled to judgment by default, sec. 245 119
When may institute action, sec. 59 72
Who required to be joined as, sec. 19. 63
When required to give security for costs, sec. 514 195
What to allege in complaint against boat, sec. 222 113
What to prove in forcible entry and detainer, sec. 723 247
In justice's court, undertaking of for arrest, secs. 747-753 254
Notice to, of arrest in justice's court, sec. 749 255
Affidavit for attachment in justice's court, sec. 754 256
Undertaking of, in same, sec. 755 256
May claim delivery of property in justice's court, see. 758 256
Affidavit in such case, sec. 759 256
Undertaking in such case, sec. 761 257
Effect of annexing to complaint a copy of instrument sued, sec. 775 260
May prosecute suit in his own name, sec. 737 251
Failing to appear, action dismissed, sec 751 255
In action pending at death of defendant, duty of, sec. 159 313
In probate court, defined, sec. 326 354

See Parties.

PLATS.
See Townsites and Plats.

PLEAD.
Refusal to, sec. 199 441

PLEADINGS IN CIVIL ACTION.
Accounts, how stated in, sec. 101 85
Answer in libel, etc., sec. 108 86
Allegation not denied, deemed admitted, sec. 109 87
Allegation not proved, what deemed, sec. 114 87
Amendments of, secs. 112-116 87
Adverse party entitled to copy of same, sec. 101 85
Allowed to plaintiff, sec. 83 79
Amendments to complaint served on adverse party, sec. 87 81
Answer, what to contain, secs. 89, 90. 82
Amended, when action or demurrer to be filed, sec. 115 88
Complaint, and what to contain, secs. 84, 85 80
Counter claim, defined, sec. 90 82
Cross-demands and separate defences, sec. 91 82
Causes of demurrer, sec. 87 81
Construction of, sec. 100 85
Demurrer first disposed of, sec. 87 81
Defendant may demur and answer, sec. 87 81
Same, not to be filed at same time, sec. 87 81
Definition of, sec. 81 79
Demurrer to answer, secs. 92, 93 83
Effect of failure to set up counter claim, sec. 91 82
Forms and sufficiency of, sec. 82 79
Grounds of same, must be specified, sec. 87 81
In case of attachment, sec. 185 104
In libel or slander, sec. 107 86
Initial letters of christian name may be used, sec. 118 89
In suit for taking personal property, what officer may plead, sec. 117 88
Judgment, how described, sec. 103 86
Judgment roll to contain, sec. 306 139
Material allegation, defined, sec. 110. 87

PAGE.

PLEADINGS IN CIVIL ACTION.
- Of condition, precedent, sec. 104...... 86
- Of private statute, sec. 106 86
- Replication, if answer contains new matter, sec. 94........................ 83
- Real estate, how described, sec. 102.. 86
- Right to inspect instrument, sec. 99. 85
- Sham and irrelevant answers, etc., stricken out, sec. 101.................. 85
- Statute of limitation, sec. 105......... 86
- Supplemental, when allowed, sec. 111 87
- To be subscribed, sec. 95 84
- Trial of facts, not raised by, sec. 3.... 59
- Under chapter entitled "Liens," sec. 1378.. 1031
- Variance with proof, sec. 112.......... 87
- Verification of, sec. 96........ 84
- What amendments allowed, sec. 115 88
- When defendant may demur, sec. 87 81
- When defendant to answer and effect of failure, secs. 87, 88................ 81
- When defendant's true name unknown, sec. 118 89
- When errors disregarded, sec. 119.... 89
- When genuineness and due execution of instrument deemed admitted, secs. 97, 98 84

PLEADINGS—CIVIL, IN JUSTICES' COURT.
- Same, when raised, duty of justice, sec. 779...... 261
- Undertaking of defendant, when same certified, sec. 779 261
- Rules of district court, how far applicable, sec. 804....... 269

See Justice of the Peace.

PLEADINGS IN CRIMINAL CASE.
- On impeachment of officer. sec. 48 .. 412
- Form and rules of, secs. 162-192...... . 435
- Of defendant, sec. 193-225....... . . 440
- Motion to set aside, demur or plead to indictment, sec. 205.... 442
- Same, when to prevail, secs. 206, 207 442
- When motion to set aside waived, sec. 208...... 442
- Defendant must demur or plead, when, sec. 209........ 442
- Effect of granting motion, sec. 210.. 442
- Re-submission to grand jury, sec. 211 442
- Causes of demurrer, sec. 212 443
- Form and requisites of demurrer, sec. 213................................. 443
- Effect of sustaining demurrer, sec. 214..................................... 443
- Effect on bail of re-submission to grand jury, sec. 215 443
- If demurrer overruled, defendant to plead, sec. 216 443
- When demurrer to indictment waived, sec. 217 443
- Kinds of pleas to indictment, sec. 218 444
- Pleas must be oral, and entered on minutes, sec. 219................. . . 444
- Defendant charged with felony must plead personally, sec. 220............ 444
- Withdrawal and substitution, sec. 221 444
- Plea of "Not guilty," what deemed, sec. 222................................ 444
- Variance between indictment and proof, effect of, sec. 223 444
- In probate and justice's courts, sec. 484.................. 494

See Issues.

POISON.
- Murder by, punished, sec. 21 505
- To produce miscarriage, sec. 42....... 508
- With intent to murder, sec. 44 509
- Put in spring or well, sec. 63.......... 512
- Prescribing by drunken physician, sec. 182 551
- Selling without label, sec. 183........ 551
- Administering to cattle, sec. 214 560

PAGE

POISON.
- Record of sales to be kept and penalty for failure, secs. 184-187 552
- Putting same out within certain limits prohibited, sec. 212 559
- Punishment for, sec. 213 559

PLAY HOUSE.
- Not to be open on Sunday, sec. 157... 544

POLL-BOOK.
- See Elections,

POLLS.
- Opening and closing, sec. 1017... . .. 926
  - See Elections.

POOR.
- Person may prosecute without advancing costs, sec. 516 196
- Woman may prosecute without costs, sec. 1005.... 920
- Control of, vested in county commissioners, sec. 1609.... 1086
- Relative to care for, and liable for support, sec. 1610............ 1086
- Order in which relatives liable, sec. 1611....... 1087
- When entitled to relief from county, sec. 1612........... 1087
- Proposals for care of, notice to be published, sec. 1613......... 1087
- Same, by whom received and opened, and contracts awarded, secs 1614-1625............................... 1087
- Medicines and attendance, regulations for, secs. 1615, 1616............ 1087
- Bond and duties of contractor and physician, sec. 1616.. 1088
- Minor or pauper, binding of, sec. 1617 1088
- Sick, non-resident, sec. 1618. 1087
- Application for relief, to whom made, sec. 1619...... 1089
- Belonging to another county, proceedings in case of, sec. 1620........ 1089
- Same, when not entitled to relief, sec. 1621......... 1090
- Poor farm and work house, authority for, sec. 1622 1090
- Surplus in poor fund, how applied, sec. 1623.... 1090
- Neglect of county commissioners punished, sec. 1624...... 1090
- Bids may be rejected, sec. 1625 . . 1090
- Tax, sec. 1790........... 1149

POOR FARM.
- Powers of county commissioners as to, sec. 1622.......... 1090

POOR FUND.
- Surplus earnings of poor farm and workhouse applied to, sec. 1623..... 1090

POOR TAX.
- Assessment and collection of, sec. 907........ 884
- When and how levied and collected, sec. 1790........ 1149
- Disposition of, sec. 1790 1149

POSSE COMITATUS, secs. 16-19 406
- Penalty for failing to assist sheriff, secs. 158, 175. 544

POSSESSION.
- Presumption of, of real estate, secs. 32-35........................ 66
- Of tenant, that of landlord, sec. 37... 67
- Right not impaired by descent cast by death, sec. 38...... 67
- Of mining claims, limitation concerning, sec. 40. 68
- Defendant may be arrested to recover, when, sec. 121........... . 90
- In claim and delivery, secs. 156-159 . 97
- Powers of receiver as to, sec. 233 . 117
  - Execution for, secs. 313-316....... 142

PAGE.

POSSESSION.
- Where ordered stay of execution, sec. 427 175
- By plaintiff in eminent domain, sec. 614 221
- Of estate of decedent, sec. 128, p. 303, sec. 225 331
- Right of to public domain, sec. 1658. 1102

See Corporations, Real Estate, Wills.

POWER OF ATTORNEY.
- Defacing or destroying punished, sec. 90 521
- To convey real estate, requisites of, sec. 261 662
- When deemed revoked, sec. 262 662

POSTHUMOUS CHILD.
- Takes under will, when, sec. 496 389
- How considered, sec. 552 406
- When defeats future estate, sec. 280.. 664

PRACTICE.
- Courts may establish, sec. 523 198
- In justice courts, code of civil procedure applies to, sec. 814 269
- Under "chapter entitled liens," sec. 1378 1031

See Liens.

PRECINCT ELECTION.
- County commissioners may establish, sec. 756 844
- At Indian agency or reservation, prohibited, sec. 1055 937
- Counting returns from pretended, punished, sec. 1056 937

PREGNANCY.
- Of female sentenced to death, secs 384-386 474

PRESUMPTION.
- Of possession when legal title established, sec. 32 66
- When tenant holds possession, sec. 37 67
- In favor of witness, sec. 619 223
- In case of protest, sec. 637 226

PRIEST.
- Exempt from serving as juror, sec. 1305 1009

See Clergyman.

PRINCIPAL
- Effect of payment on contract, secs. 53, 54 70

PRINCIPAL AND SURETIES.
See Joint Debtor.

PRINTER.
- Affidavit of publication of summons, sec. 78 78

See Rates of Legal Publications.

PRINTING.
- Writing deemed to include, when, sec. 539 201
- Public, who to contract for, sec. 626. 1091
- Rates allowed for territorial, secs. 1626-1636 1091
- Term of contract, secs 1627-1640 1092
- Duties of contractor, secs. 1628-1633.. 1092
- Legislative, secs. 1628, 1629 1092
- Of officers' reports, sec. 1630 1092
- Laws and resolutions, sec 1631 1092
- Secretary to furnish copies, sec. 1631. 1092
- Penalty for refusal, sec. 1632 1093
- Newspapers containing laws, sec. 1633 1093
- Pay for newspapers and printing same, sec. 1634 1093
- Pay allowed for territorial, sec. 1635. 1094

PAGE.

PRINTING.
- Contractor to furnish account under oath, sec. 1636 1094
- Same, examination of and how paid for, sec. 1636 1094
- Contract for county, secs. 1637-1638 1094
- For public and legal advertisements, sec. 1639 1095
- Contractor to furnish certificate and affidavit of publication, sec. 1639 1095
- Term of contract, and what to include, sec. 1640 1096
- Publication, when void, sec. 1640 1096
- Account for county, sec. 1641 1096
- Bonds of contractors, sec. 1642 1096
- Term "Folio," defined, sec. 1643 1097
- New contract made upon failure of contractor, sec. 1644 1097
- Same, rates for other, sec. 1645 1097
- For school purposes, regulated, sec. 1920 1192
- Printing blanks and lithograph work for the governor, sec. 1646 1097
- Treasurer's report, sec. 1647 1098
- Publication of treasurer's report, sec. 1643 1098
- Synopsis of proceedings of commissioners to be published, sec. 1649 1098
- Annual report to be prepared by county clerk, sec. 1650 1099
- Publication of annual report, sec. 1651 1099
- How published when no newspaper published in county, sec. 1652 1100
- County commissioners to contract for county printing, sec. 1653 1100
- Penalty for violation, sec. 1654 1101

PRISON.
- Grand jury to inquire into condition of, sec. 149 432

PRISONER.
- Action against officer for escape, limitation of, sec. 45 69
- For debt, how discharged, secs. 147, 148 95
- Application for discharge, sec. 153 96
- Effect of discharge, sec 154 96
- Plaintiff may discharge, sec. 155 96
- Being witness, how produced, sec. 665 233
- When civilly dead, sec. 279 583
- Judge of court of record may admit to bail, sec. 103 423
- Grand jury to inquire into case of, sec. 149 432
- Right of officer to travel throughout territory with, secs. 446, 447 486
- Allowance for ironing, sec. 418 480
- Inhumanity to punished, sec. 115 530
- By whom returned to county for new trial and fees therefor, sec. 455 488
- Rescue and escape of, secs. 121, 122 532
- Officer having in charge, powers and rights of, sec. 447 487
- Penalty for aiding escape of, secs. 125, 126 533
- Officer aiding or permitting to escape, sec. 127 534
- Governor may offer reward for, sec. 284 584
- Fees and expenses of transporting, how paid, sec. 1077 945
- May apply for writ of habeas corpus, sec 1164 974
- When to be discharged on same, secs 1182-1185 977
- When not to be discharged on same, secs. 1184, 1185 978
- Effect of discharge, sec. 1192 979
- Discharge of pauper, sec. 390 475
- Employment of, sec. 472, 473 491
- Civil rights may be restored, sec. 280. 583

See Convicts, Jails and Prisoners.

PRIVATE ROAD.
See Roads and Highways.

PAGE.

PRIVATE PROPERTY.
When taken for public use, sec. 600. 215
Rights in such case, sec. 601 216

PRIVATE STATUTE.
How pleaded, sec. 106, p. 86, sec. 174. 436

See pleading.

PRIZE FIGHTING.
Penalty for engaging in or aiding, secs. 147-149 539
Perjury in case of, sec. 150 540
Duty of sheriff in case of, sec. 151 540

PRIZE RING.
Unlawful to keep open on Sunday, sec. 137, p. 544, sec. 1406 1039

PROBATE COURT.
Appoint administrator in place of executor, sec. 11 278
Appoint appraisers, sec. 119 301
A court of record, sec. 543 203
Appeals from, sec. 445 181
Appeals in civil actions, when taken and how tried, sec. 448 181
Attachment may be levied on real estate, sec. 710 244
Always open for other business, sec. 709 244
And to support and educate minor, sec. 370 367
Bond for costs, sec. 452 182
Bond of clerk of, secs. 192, 193 644
Costs allowed in, sec. 495 192
Created, and jurisdiction of, secs. 706, 707, 708 243
Claims against decedents to be filed in, sec. 154 312
Civil code to govern proceedings, sec. 710 244
Causes for which guardian may be removed, sec. 426 377
Costs in, how taxed, sec. 522 197
Custodian must deliver will to, sec. 8 277
Change of venue by, sec. 63 73
Costs of appeal, to whom taxed, sec. 502 193
Contempt of, secs. 584-596 210
Condemnation of lands, etc., for corporations, sec. 487 737
Clerk of, accounts and settlements with county commissioners, sec. 476 909

See Clerk Probate Court.

Contesting will after probate, limitation of, sec. 30 282
Discretion in granting letters of administration, sec. 57 290
Embezzlement and surrender of property, secs. 129-132 303
Foreign wills admitted, secs. 27-29 281
How appeal taken, sec. 450 181
Issues of fact, how tried, sec. 32 282
Judgment after death of party, sec. 305 139
Jurisdiction and rules for appointment guardian, sec. 419 376
Judge disqualified shall not admit will, sec. 109 298
Judgment for personal property, sec. 117 88
Jurisdiction in case of change of venue, sec. 64 73
Juries in, sec. 714 245
Justification of sureties, sec. 453 182
Judgment of not a lien on real estate, sec. 710 244
Judge of conservator of the peace, sec 712 245
Jurisdiction of, sec. 1, p. 274, sec. 7 276
Jurisdiction of guardian appointed by, sec. 395 371
Jurisdiction of as to offences, sec. 6 404

PAGE.

PROBATE COURT.
Lost or destroyed wills probated, secs. 37-39 283
May appoint appraiser, sec. 1 274
May appoint agent for absent distributees, and proceedings, secs. 306-313 350
May appoint attorney, sec. 328 355
May appoint guardian for minor of unsound mind, sec. 416 376
May compel executors, administrators and guardians to account, sec. 1 274
May compel attendance of witnesses and production of deeds, papers and property of estate or minor, sec. 1 274
May compel guardian to account, sec 372 367
May distribute and partition estates, sec. 1 274
May grant or revoke letters testamentary, of administrator, or guardianship, sec. 1 274
May open and receive proof of wills, sec. 1 274
May order sale of property and payment of debts of estates, sec. 1 274
May order moneys of estates invested, sec. 272 341
May revoke letters for failure to return inventory, sec. 125 302
May revoke letters for contempt, sec. 33i 356
May remove insane or incapable guardian, sec. 400 373
Notice, and on whom served, sec. 14. 279
Notice given of hearing a petition, sec. 13 278
Notice of record of, sec. 316 353
Nuncupative will proven, secs. 41-43. 284
Order of what to contain, sec. 314 353
Same, publication of, sec 315 353
Order to produce will, sec. 12 278
Power as to taxing costs, sec. 330 356
Powers and duties of judge, at chambers, as to guardian and ward, sec. 407 375
Proceedings by and concerning public administrators, secs. 333-350 357
Provision for proof of will, sec. 9 278
Provision for support of the family, secs. 133-139 305
Proceedings for sale of property by guardian, secs. 376-391 368
Powers in civil cases, sec. 713 245
Proceedings in regard to sales of property of decedents, secs. 174-224. 318
Prosecutions in for crimes, how conducted, sec. 5 404
Powers of, sec. 540 203
Powers of judge at chambers, sec. 2 275
Partition of estate, secs. 294-305 347
Powers to determine controversy, sec. 26 64
Process to contest will, sec. 31 282
Proceedings to assign homestead to family, secs. 140-146 307
Proceedings when judge disqualified, sec. 711 245
Removal and suspension of administrators and executors, sec 113-117 299
Rules of practice in, secs. 323, 324. 354
Stay of proceedings, sec. 300 138
Stay of proceedings on appeal, sec. 455 182
Sales of property of decedents, approval of, sec. 173 318
Settlements of administrator or executor, secs. 254-272 338
Sheriff to execute process, sec. 458 183
Trial by, sec. 279 129
To cite executor or administrator, on petition of bondsman, sec. 90 295
To disregard errors in pleadings, when, sec. 114 89
To enforce contracts of decedent for conveyance of real estate, secs. 237-246 334
To have a seal, sec. 527 199

PAGE.

PROBATE COURT.
- Trials in, how conducted, sec. 21 280
- Transcript on appeal, sec. 454 182
- Transfer of cases from district court to, sec. 705 243
- Terms of, sec. 709 244
- Transcript of judgment, sec. 710 244
- Trial of issues in, sec. 327 355
- Time when same taken, sec. 446 181
- Undertaking on appeal, sec. 451 182
- Use of the seal of, sec. 5 275
- Venire for jury, sec. 715 245
- When judge may act in another county, secs. 3, 4 275
- What petition must show, sec. 10 278
- When proceedings retransferred, sec. 111 299
- When revoke probate of will, sec. 33. 283
- When retransfer to be ordered, sec. 112 299
- When regular proceedings dispensed with, sec. 138 306
- When transfer to adjoining county, sec. 110 298

PROBATE AND JUSTICE'S COURTS.
- Actions by complaint, sec. 474 493
- Appeal by territory, sec. 527 499
- Action for breach of recognizance, sec. 504 496
- Arraignment of, sec. 479 494
- Appeal of prosecuting witness, sec. 530 499
- Counsel appointed, sec 481 494
- Costs and appeal, sec. 514 497
- Collection and return of fines, sec. 521 498
- Commitment before trial, sec. 503 496
- Court may modify, sec. 499 495
- Challenge to jurors, sec. 490 495
- Court to summon and enforce attendance of witness, sec. 505 496
- Court to decide matters of law, sec. 491. 495
- Delivery and entry of verdict, sec. 494 495
- Disagreeing jury discharged, sec. 497. 495
- Defendant may appeal, sec. 510. 497
- Defendant to be personally present, sec. 478 494
- Entry and hearing of appeal in district court, sec. 513 497
- Exceptions by territory, sec. 526 498
- Execution for fines and costs, sec. 518 497
- Execution on judgment, sec. 517 497
- Fines paid to county treasurer, sec. 522 498
- How defendant committed to be discharged, sec. 509 496
- If demurrer sustained, new complaint, sec. 485 494
- Judgment against defendant on appeal, sec. 515 497
- Joint defendants, verdict, sec. 495 495
- Judgment for fine and costs, sec 508. 496
- Jury less than twelve, sec. 487 494
- Jury may separate by consent, sec. 492 495
- Jury may agree as to some defendants, and disagree as to others, sec. 496 495
- Jury may fix punishment, when, sec. 498 495
- Mittimus, sec. 524 498
- Manner of taking appeal, sec. 528 499
- Name of defendant in criminal action, secs. 482, 483 494
- Notice to witnesses on continuance, sec. 520 498
- Not to affect pending action, sec. 525 468
- Pleadings, sec. 484 494
- Proceedings in criminal actions, secs. 474-530 493
- Penalty if magistrate or officer neglect duty, sec. 519 498
- Penalty for delinquency, sec. 523. 498
- Postponement of trial, sec. 502 496

PAGE.

PROBATE AND JUSTICE'S COURTS.
- Qualifications of jurors, sec. 490 495
- Reversal and trial de novo, sec. 529 499
- Recognizance, and notice of appeal, sec. 510 497
- Trial and punishment by court, sec. 500 495
- Trial de novo, sec. 516 487
- Transfer of case to district court, sec. 501 495
- Transcript on appeal, sec. 511, 497
- Time to appeal, sec. 480 494
- Verdict general, sec. 493 495
- What complaint to specify, sec. 475 493
- Warrant issued, sec. 477 494
- Who may make complaint, sec. 476 493
- Waiver of jury trial, sec. 486 494
- Waiver or consent noted by court, sec. 488 494
- When prosecutor to pay costs, sec. 507 496
- Witnesses recognized to appear at district court, sec. 512 497
- When to act as committing magistrate, sec. 506 496

PROBATE JUDGE.
- Approve county commissioner's bond, sec. 776 849
- Bond and oath of appointee, sec. 1591. 1081
- Claims against decendents, how proved and allowed, secs. 152, 153 311
- Same, may take evidence as to, sec. 156 313
- Countersign drafts of public administrator, sec. 344 359
- Copies of records and papers in evidence, sec. 925 889
- Duties as to bond and oath of executors and administrators, secs. 75-93 293
- Duties as to appointment of guardian for insane and incompetent persons, and discharge of same, secs. 364-366 365
- Duties and compensation, sec. 820 863
- Duties in regard to insane, sec. 1215. 985
- Duties of, on complaint against offender, secs. 21-25 407
- Deed of school site to directors, sec. 2028 1224
- Disqualified, proceedings to transfer cause, sec. 109 298
- Endorsement of same, sec. 160 313
- Examination of claims and deeds for lots, sec 2019 1222
- Election, term and bond, sec. 814 862
- Entitled to supreme court reports, sec. 1995. 1215
- Fees for same, sec. 2020 1222
- Fees in probate, sec. 1088 948
- Fees of, in such case, sec 314 674
- Fees of, in same cases, sec. 1220 986
- Give notice of public sale of lots, sec. 2026 1224
- Justification of bail in civil action, before, secs. 135-138 93
- May appoint guardian to appear for infant, sec. 9 61
- May appoint guardian for minor. secs. 351, 352, 353 362
- Same, must give notice of, etc., sec. 351 362
- May allow account of joint guardians, on oath of either, sec. 374 368
- May authorize sale of property deviced, when, sec. 315 393
- May appoint guardian for non-resident, sec. 392 371
- May borrow money to defray expenses of entry, etc., sec. 2025 1224
- May cite and examine person concealing or embezzling property, etc., of minor, sec. 399 373

PAGE.

PROBATE JUDGE.
- May cite and examine person as to estate of decedent, secs. 340, 341..... 358
- May discharge guardian or require new bond, secs. 401, 402... 374
- May enter land for town site, when, secs. 2011, 2012.......... 1219
- Money for lots deposited with, sec. 2024........ 1223
- May hold terms in other counties, secs. 3, 4.................... .. 275
- May insert conditions in order appointing guardian, sec 359.......... 364
- May order public administrator to account for and deliver over money, sec. 342........................ 358
- May order arrest in civil action, sec. 122..................................... 91
- May order sale of property attached, before judgment, sec. 541............ 202
- Must set apart site of college or university, when, sec. 2028.............. 1224
- Must turn over books and papers to successor, sec. 2027.............. .. 1224
- Not to deal in warrants or indebtedness, sec. 1579. 1079
- Not to be county treasurer, sec. 490... 880
- Official bond to be recorded, sec. 1587. 1080
- Order public administrator to pay over to territorial treasurer, sec. 347... 360
- Powers at chambers, sec. 2......... ... 275
- Powers as to probate of will, sec. 15.. 279
- Public administrator to make return of estates to sec. 343.......... .. 358
- Powers and duties at chambers as to guardian and ward, sec. 407 .. 375
- Powers and duty as to ward of unsound mind, sec. 431............ 378
- Penalty for failure to perform duties, sec. 927....... 889
- Penalty for violation of same, secs. 1583, 1584...... 1079
- Proceedings in regard to judgment debtor, secs. 350-357 155
- Proceedings in case of insane convicts, sec. 312. 673
- Powers of, sec. 524 199
- Proof of claims, before, secs. 1211, 1212-2017, 2018 1221
- Proceedings to examine dams and reservoirs being constructed, secs. 985-990 915
- Power to grant orders and process, sec. 713............... 245
- Same, appointment, oath and duties of examiners, secs. 984-980.......... 913
- Same, proceedings to secure, secs. 987-989...... 913
- Same, trial of cause and selection of jury, secs. 988, 989 914
- Same, appeal, sec. 990................ 915
- Pay unclaimed jury and witness fees to county, sec. 1103 954
- Same, duties as to notice of, etc., secs. 1104, 1105.... 954
- Same, penalty for forfeiture, to pay over, sec. 1007.......... 954
- Records and papers open to public, bond and oath of, sec. 912........... 886
- Report to superintendent of schools and penalty for neglect, sec. 1903 1188
- See accounts and settlements of county officers, secs. 967-977......... 908
- Statements to be filed with, by same, secs. 2015, 2016.......... 1221
- To appoint county commissioners to fill vacancy, sec. 1590.............. 1081
- To be an officer of the peace, sec. 20.. 407
- To certify provisions of lost will, sec. 39 283
- To cause survey and plat of same, sec. 2013.......... 1220
- To convey to occupants having prior rights, when, sec. 2029 1225
- To fix day for hearing will, sec. 13... 278
- To give notice to claimants of lots, sec. 2015.................................... 1221

PAGE.

PROBATE JUDGE.
- To hear testimony and make deed in case of contest, sec. 2021............ 1222
- To make transcript on appeal, sec. 454..... 182
- To pay proceeds of town lots to county treasurer for school fund, sec. 1944.. 1200
- To record statements, sec. 2016....... 1221
- Vacancy in office, effect of, sec. 525.. 199
- Vacancy in office, how filled, sec. 1589 1081
- Where and when to keep office open, and penalty for neglect, sec. 911. 886
- When official term to begin, sec. 1040................ 933

PROBATE OF WILLS.
- See probate court, wills.

PROCEEDS.
- Of encumbered estate in partition, sec. 396 168
- Distribution on sale in partition, sec. 398 169

PROCEDURE.
- To condemn land for corporations, sec. 487............. 737

PROCESS.
- Constable may execute after term expires, sec. 815....... 271
- Officer may require assistance in serving, sec. 19............... 407
- Defacing or falsifying, punished, sec. 114.... 530
- Obstructing service of, sec. 120....... 532
- Rescuing prisoner under civil, sec. 125...................... 533
- Against counties, how served, sec. 749.... 843
- Sheriff, under-sheriff or deputy to execute, sec. 255.......... 873
- Under chapter entitled "Liens," sec. 1378 1031

PROFESSIONAL MEN.
- See Licenses.

PROHIBITION.
- Writ of, return and hearing, when to be had, secs. 579-583.... 209
- Provisions for mandamus, apply to, sec. 582 209

PROMISE, NEW.
- Effect on limitation, sec. 53.. 70
- When must be in writing to bind estate of executor or administrator, sec. 247.......................... . 337

PROMISSORY NOTE.
- Assigned before due, defences, to action, sec. 5 61
- Who included in suit on, sec. 20 63
- Payment on effect on limitation of action, sec. 54 70
- Costs of several actions on one, sec. 496... 192
- How sued on in justice's court, sec. 740....................... 252
- Altering, forging, etc., punished, sec. 96.... 523
- Circulating as money, punished, sec. 224... 565
- Possession of same, sec. 101....... 525
- Interest on, secs. 1237, 1238............. 991
- Protest of, for non-payment, sec. 1574 1077
- See Bills of Exchange and Promissory Notes, Contracts, Written Instruments.

PROOF.
- Of service of summons, sec. 78....... 78
- When statute of limitation pleaded, sec. 105..... 86
- Variance of, with pleading, sec. 112.. 87

PAGE.

PROOF.
- Of acknowledgment of conveyance, sec. 524 ... 199
- Evidence of one witness sufficient, sec. 616 ... 223
- Of conveyance, secs. 245-250 ... 659
- Of mitigation, in homicide, sec. 40 ... 508
- In forgery, sec. 164 ... 526
- Of overt act, in conspiracy, sec. 132 ... 535
- Of truth in libel, sec. 154 ... 541
- Of marriage, in bigamy, sec. 155 ... 543
- Of liquors obtained, deceitfully, sec. 190 ... 553
- Of publication of document, etc., sec. 677 ... 236

See Wills

PROPERTY.
- Liable to execution, sec. 319 ... 144
- Exempt from execution, secs. 321-330 ... 145
- Sale of, before judgment in attachment, sec. 541 ... 202
- Of decedent liable for debts, sec. 171 ... 318

See Personal Property, Real Estate.

- To be described in complaint of offence, sec 76 ... 419
- Stolen, etc., punishment for bringing into territory, sec. 84 ... 518
- Of wife, exempt from husband's debts, when, sec. 1432 ... 1044

See Corporations, Personal Property, Real Estate.

PROTEST.
- Of commercial paper, sec. 1574 ... 1077

PROPRIETOR.
- Who included as, under chapter entitled "Liens," sec. 1387 ... 1083

PROVISIONS.
- Selling unwholesome, sec. 176 ... 549
- Adulteration of, sec 177 ... 549

PROSTITUTION.
- Enticing away female for, where offence tried, sec. 33 ... 409

PROSECUTOR.
- Name of, endorsed on indictment, when, sec. 153 ... 432
- When to pay costs in criminal action, secs. 410, 411-413 ... 479

PROTEST.
- Presumption in favor of, sec. 637 ... 226

PUBLIC ADMINISTRATOR.
- When elected—term of office, sec. 821 ... 863
- Duties and fees, sec. 822 ... 863
- Oath and bond, sec 823 ... 863
- Additional bonds may be required, sec 824 ... 863
- When office to become vacant, sec. 825 ... 864
- Any person injured may sue for breach of bond, sec. 826 ... 864
- How and when removed from office, sec. 827 ... 864
- May be indicted for misdemeanor in office and penalty therefor, sec. 828 ... 864
- When to take charge of estate, sec. 95 ... 296
- What estates to be administered by, sec. 333 ... 357
- Letters to, and bond and oath of, sec. 334 ... 357
- Notice to, of death of persons without known heirs, sec. 335 ... 357
- To return inventory, administrator and account, sec 336 ... 358
- Duty of, when another appointed, sec. 337 ... 358
- Duty of civil officers, sec. 338 ... 358

PUBLIC ADMINISTRATOR.
- To bring suits, etc., sec. 339 ... 358
- Proceedings against party concealing, sec. 340 ... 358
- Examination of party, sec. 341 ... 358
- May be ordered to account for and deliver estate, etc., sec. 342 ... 358
- To make semi-annual return of all estates, and publish and record the same, sec. 343 ... 358
- Pay moneys to county treasurer, sec. 343 ... 359
- Must not be interested in expenditures, sec. 345 ... 359
- To settle with county clerk monthly, and pay over to territorial treasurer, secs. 345, 346 ... 359
- Proceedings against, after settlement of estate, sec. 347 ... 360
- Payment of fees of officers, sec. 348 ... 360
- May administer oath, sec. 349 ... 360
- Preceding chapters govern acts of, when, sec. 350 ... 360
- Suit on bond, by whom, how, and where brought, sec. 826 ... 864
- Removal of, sec. 827 ... 864
- Punishment for misdemeanor, sec. 827 ... 864
- Failing to perform duties, sec. 927 ... 889

See Estates of Deceased Persons.

PUBLICATION.
- Of summons, secs. 73, 74, p. 77; sec. 745 ... 253
- Of document or notice, proof of, sec. 677 ... 236
- Of laws, what omitted in, sec. 155 ... 96
- Of notice to creditors of decedent, sec. 147 ... 310
- Of order to show cause against sale of real estate of decedent, sec. 187 ... 322
- Of sale of real estate of decedent, sec. 198 ... 325
- Of return of sale of same, sec. 201 ... 326
- Of brands and distribution of copies, secs. 184, 185 ... 642
- How made when ordered by probate court, sec. 315 ... 353
- Of notice of petition for conveyance, sec. 237 ... 234

See Notice, Printing.

PUBLIC BUILDING.
See County Building.

PUBLIC DOMAIN.
See Real Estate.

PUBLIC OFFICER.
See Officer.

PUBLIC PRINTING.
See Printing.

PUNISHMENT.
- For contempt generally, secs. 584-593 ... 210
- For contempt in court, sec. 586 ... 211

See Fines and Penalties.

PURCHASE AND SALE OF VOTES.
See Votes.

PURCHASER.
- At sale under execution, liability of, sec. 335 ... 150
- Same, refusing to pay, future bids rejected, sec. 336 ... 150
- Rights to real property, sec. 340 ... 151
- Rights of, when impaired by will, sec. 516 ... 393

PUPILS.
See Schools.

PAGE.

QUALIFICATIONS.
Of bail in civil action, sec. 136.. . . 93
Of sureties in claim and delivery, sec. 167.......... 99
Of sureties in attachment, sec. 182... 104
Of bail in criminal case, sec. 246 450
Of trial juror in same, sec. 277...... 456
Voter at election, sec. 1007...... 923

See Bond, Sureties, Oath, Undertaking.

QUARANTINE.
See Animals.
See Board of Trade.

QUARRELING.
Disturbance by, sec. 141... 531

QUARTZ LODES.
See Mines.

QUESTIONS.
Of fact, not in issue, how tried, sec. 3.......... 59
Of law, how arise, sec. 247............ 120
Of fact, how arise, sec. 248..... 121
Of law, how tried, sec. 249 121
Of fact at issue, how tried, sec. 250, .. 121

QUO WARRANTO.
Writ of, abolished, sec. 410...... 171

RACE GROUNDS.
Unlawful to keep open on Lord's day, sec. 157... 544
Penalty for keeping open on Lord's day, sec. 406.. 1039

RAFT.
Liability of for debts, sec. 211........ 111
See Attachment of Boats.

RAILROAD CORPORATIONS.
Capital stock, sec. 681.......... 810
Same, how paid in, sec. 681...... .. . 810
Same, may be sold for installments due, when, sec. 682 810
Annual election for directors, sec. 683....... 810
Annual report of, sec. 701............ 818
Authority to make survey, sec. 685.. 812
Auditor to furnish blanks, sec. 701... 818
Board of directors, how formed, sec. 685 810
Same, fill vacancies, make by-laws, and transact business, sec. 583. .. . 810
Certain acts or failures declared misdemeanors, and punished, sec. 700.. 818
Charter forfeited by failure to comply, sec. 688.... 815
Certain lands reserved from grant, sec. 695 817
Certificate of election of directors, sec. 683 810
Certificate of incorporation to be acknowledged and recorded, sec. 678. 809
Condemnation of lands, for, secs. 685, 686 812
Directors, how chosen and term of office, sec. 683... 810
Deeds of, how signed and sealed, sec. 692........... 816
Each share entitled to one vote, exception, sec. 683..................... 810
Governor to offer reward for robbers of trains, sec. 287......... 585
Inspectors of election, sec. 683....... 810
Liability for injuries to servants and employees, sec. 697...... 817
Lien of mortgage, sec. 691 816
May borrow money on bond and mortgage, sec. 691........ 816
May acquire and convey lands, sec. 692 816
May accept provisions of acts of congress, sec. 699.... . . ..:. 817

RAILROAD CORPORATIONS.
May change location or grade, when, sec. 690............ 816
May construct, maintain and operate telegraph line, sec 695.. 817
May divert streams, but not to impair usefulness, sec. 693 816
May increase capital stock, sec. 698.. 817
May open books for subscriptions to stock, sec. 683.... 810
Notice of same to be given, sec. 683 .. 810
May take, purchase and hold necessary lands, etc., sec. 685.............. 812
Neither territory nor municipalities responsible for debts of, sec. 696..... 817
Oath of directors, sec 683 810
President, secretary and treasurer, appointment of, sec. 683........... 810
Powers of corporators, secs. 679, 680.., 809
Proceedings to declare for forfeiture of charter, sec. 688.... 815
Property may be taken for use of, secs. 599-601...................... 215
Rights as to canyon passes, etc., limited and defined, sec. 687........ 814
Right of way and grounds granted, sec. 684............................... 811
Right to amend act and regulate, reserved to legislature, sec. 699........ 817
To appoint time and place of first meeting, sec. 683. 810
To establish or change principal office, sec. 694......... 816
Notice of same, sec. 694.. 816
Time of commencement and completion of road limited, sec. 687..... 814
Who may incorporate, sec. 677.. . 808
Railroad organized under laws of U. S., or any state or territory, may extend line into Montana; proceedings, sec. 702........ 821
Two or more railroads may consolidate, agreement, sec. 703 821
May lease or purchase other railroads, sec. 704........... 823
May create, issue and dispose of stock, sec. 705........ 823
May issue and secure bonds, sec. 706. 824
Judgment for material or labor shall be lien, sec. 707.... 824
Repeal, sec. 708....... 824

See Railroad Equipments and Rolling Stock.

See Live Stock Killed or Injured by Railroads.

RAILROAD EQUIPMENTS AND ROLLING STOCK.
When partial payment only has been made title may remain in vendor, sec. 709... 825
Contract to be recorded, sec 710 .. . 825
Mortgage of equipments, etc., to be recorded, sec. 711....... 825
Satisfaction of mortgage, when made, to be recorded, sec. 712....... 825

See Railroad Corporations.

RAMS.
When not to run at large, secs. 76-78. 612

See Animals.
See Live Stock.

RANCHMEN, PUBLIC.
Animals left in care of, penalty for using, sec. 271.... 581

See Liens.

RANGE.
Live stock in, how seized under process, sec. 223....................... 113
Possession of, how taken under mortgage, sec. 224....... 114

PAGE.

RANGE.
- Time attachment holds good, limited, sec. 225 114
- Duties of county recorder, sec. 226 114
- Penalty for selling stock which has been seized, sec. 227 114
- Second writ, how served, sec. 228 115

RAPE.
- Proof necessary to convict of, sec. 297 460
- When murder, sec. 21 505
- Defined, sec. 46 509
- Essential guilt of, sec. 47 510
- Age at which conviction may be had, sec. 48 510
- Punishment for, sec. 49 510

RATES OF LEGAL PUBLICATIONS.
- For territorial printing, secs. 1626-1645 1091
- For printing for counties, sec. 1637. 1094

REAL ESTATE.
- Actions concerning, secs. 366-375. 160
- Same, to determine interests in, sec. 366 160
- Actions concerning in partition, secs. 377-409. 164
- Actions concerning when landlord joined as defendant, sec 16 62
- Actions concerning when parties may unite, sec. 18 62
- Actions for possession, who made defendants, sec. 17 62
- Same, when writ of possesion to issue, sec. 17 62
- Action to foreclose mortgage, sec. 385 158
- Adverse possession, what deemed, sec 34 66
- Alienation does not prejudice claimant, sec. 374. 161
- All muniments of title to be recorded, sec. 1662 1103
- Arbitration of questions concerning, sec. 472 186
- Attachment from probate court, levy of, sec. 710 244
- Certificate of sale of, sec. 340 151
- Charged with debts of decedent, secs. 174-224 318
- Same, when may be sold, sec. 186. 321
- Same, petition for, sec. 187 322
- Same, order to show cause and service or publication of, secs 188-189. 322
- Same, hearing of petition, secs. 190-191 323
- College sites transferred to school trustees, sec 1948 1201
- Same, former transfer to county superintendent valid, sec. 1948 1201
- Condemned for corporations, sec. 487 737
- Contracts for conveyance by decedent, how enforced, secs. 236-246 334
- Conveyance of to purchasers, sec 204 327
- Same, postponement of, secs 206-207 327
- Conveyance or lease for more than one year to be in writing, sec. 219 651
- Conveyance to defraud creditors void, sec. 229 653
- Conveyances of. See Conveyances of Realty, secs. 235-283 656
- County may purchase and hold and may sell and convey, sec. 744 842
- Damages for injuring, sec. 373 161
- Debts of ward paid out of, when, secs. 367-369 366
- Declaration or deed to be acknowledged and recorded, sec. 1658 1102
- Declarations, form and rules in regard to, sec. 1661 1103
- Descent of, etc., secs. 531-557 395
- Description in complaint, sec. 102 86
- Duty of justice in case question arises, sec. 780 562
- Escheat of, sec 553 400

REAL ESTATE.
- Evidence of title not admitted in justice's court, sec. 779 261
- Executions, proceedings under, secs. 313-339 142
- Executor or administrator deliver possession to, when, sec. 128 303
- Exemptions of, from execution, sec. 327 148
- Fraudulent transfer and agreement to transfer, penalty for, secs. 197-200 555
- Fraudulently conveyed by decedent, how recovered and disposed of, secs. 233-235 333
- Given to heirs by way of advancement, how taken, sec. 544 398
- Guardian not to permit waste of, sec. 422 377
- Heirs or devisees may maintain action, sec. 127 303
- Held under contract of decedent, authority and proceedings to sell, secs. 213-216 328
- How described in peobate notice, sec. 322 353
- How levied upon in attachment, sec. 186 105
- How sold on execution, secs. 331-337 148
- Improvements as set-off, sec. 369 160
- Inherited by alien foreigner, secs. 554-556 400
- Injunction against possessor injuring, sec. 372 161
- Irregular sales of, under execution, purchaser may recover, sec. 347 153
- Judgment against decedent, when not a lien on, sec. 163 314
- Judgment in probate court not a lien, sec. 710 244
- Same, transcript of, how made a lien, sec. 710 244
- Judgment from another county against, sec. 65. 73
- Judgment revived. and lien of, sec. 347 153
- Liable for debts of decedent, secs. 510, 511, 512 392
- Liable for deficiency, sec. 358 158
- Liable to execution, sec. 319 144
- See homestead, secs. 322-330 147
- Lien of judgment against, sec. 307 139
- Lien of judgment for criminal offence sec. 463 489
- Lien of recognizance for same, sec. 464 489
- Lien of transcript from justice's court, sec. 800 266
- Lien of transcript of judgment from another county, sec. 310 140
- Liens upon, paid out of proceeds of sale, and how paid, sec. 217 329
- Limitation for recovery of interest in, sec. 30 66
- Limitations for recovery of, sec. 29 65
- Mines excluded, sec. 1664 1104
- Same, governed by local laws and customs, sec. 1664 1104
- Mortgage not deemed conveyance, and must be foreclosed, sec. 371 161
- Mortgagee may purchase interest of decedent, sec. 218 330
- Notice of lis pendens, sec. 70 75
- Notice of sale, sec. 196 324
- Notice of sale under execution. sec. 332 149
- Of decedents, partition of, secs. 294-305 347
- Of minors, proceedings for sale of, secs. 376-390 368
- Or testators, liable for debts, sec. 211. 328
- Of school district, how sold and conveyed, sec. 1879 1180
- Order for sale, secs. 193, 194. 323
- Order for survey, sec. 369 160
- Proceedure under such order, sec. 370 161

PAGE.

REAL ESTATE.
  Order of probate court for sale of may be appealed from, sec. 445...... 181
  Possession by tenant deemed possession by landlord, when, sec. 37..... 67
  Possession under color of title, when deemed adverse, sec. 33 66
  Possession under written title, what deemed, secs. 35, 35.... 67
  Presumption of possession, when legal title established, sec. 32 66
  Private sale of, sec. 198 325
  Proceeding to redeem, sec. 345..... . 153
  Proof in actions concerning mining claims, sec. 375 161
  Record of execution and returns, sec. 315 143
  Records as evidence, sec. 1663 . .. 1103
  Removing boundary corner, penalty for, sec. 91............................ 521
  Re-entry of, when contempt, sec. 585.... 211

  See Eminent Domain, sees. 597-615 214

  Restraint of waste pending redemption, sec. 346.............. 153
  Right of possession not affected, by descent cast by death, sec. 38 67
  Right of redemption, secs. 342, 343 .. 151
  Right to occupy public domain, sec. 1657 1102
  Rights of persons to compel sale of, sec. 195....... 324
  Rights of purchaser, etc., not impaired by devise, sec. 516....... . .. 393
  Sale at auction, how and when made, sec. 197......... 324
  Sale, report and confirmation of, secs. 199-205..... 325
  School trustees may rent, purchase and sell school lots, when, sec. 1885. 1182
  Sold subject to redemption, sec. 341. 151
  Stay of execution on appeal, secs. 426-427 175
  Taxation of. See Taxes.

  See Corporations, Forcible Entry and Detainer, Guardian, Liens, Town Sites, Mines and Mining Claims.

  Termination of plaintiff's title during suit, sec. 368................ . 160
  Term construed, sec. 202 647
  Term "conveyance" construed, sec. 270........ 663
  Transferable interest in, sec. 1659..... 1102
  Trespass on, limitation of action, sec. 42...... 69
  Trespass upon, sec. 363...... 159
  What local laws to govern, sec. 1660. 1103
  When deemed personal property, sec. 495........... 389
  When entry upon sufficient, sec. 31.. 66
  When plaintiff not to have costs, sec. 367................ 160
  When whole estate may be sold, sec. 192................................. 323
  Where cause concerning trial, sec. 56 71
  Who may devise, sec. 432.... 380
  See Wills, secs. 432-501........... . 380
  Who not affected by statute of limitations, sec. 39................ 67
  Same, when must commence actions, sec. 39....... 67

  See Mines, Mining Claims.

  Wills of, how construed, sec. 529..... 394

REASONABLE DOUBT.
  Effect of on conviction, sec. 308 462

REBATE.
  Of interest in attachment, sec. 183... 104

PAGE.

REBUTTAL.
  Testimony of adverse party, sec. 670 234
  See Evidence, Party.

RECEIPT.
  Of register or receiver of land office, evidence of, sec. 542........... 202
  Destroying or defacing, punished. sec. 90................................ 521

RECEIPTS.
  Blank, auditor to furnish county collector, sec. 119 625
RECEIPTS.
  Of territorial treasurer, sec. 133...... 629

RECEIVER.
  Appointment of secs. 229-231........ 115
  Interested person not appointed, sec. 231......... 116
  Oath and undertaking, sec. 232 117
  Powers of, sec. 233. 117
  Funds received by, may be invested, sec. 234......... 117
  Receipt or eertificate, record of, sec. 542 202
  Of stolen property, secs. 82-85........ 518

RECOGNIZANCE, CRIMINAL.
  To keep the peace, secs. 23, 24 407
  Forfeiture of, sec. 26.. 408
  Officers to deliver to clerk of court, sec 82 420
  On adjournment of examination, sec. 86............ 421
  Proceedings after forfeiture of, sec. 87......................... 422
  Of prosecuting witness, sec. 99. . . . 422
  Of witnesses, sec. 100................. 423
  Of married woman or minor, sec. 101 423
  Penalty for refusing, sec. 102 423
  Certified to court having jurisdiction, sec. 105 423
  Proceedings against sureties, sec. 106....... 424
  Surety may be discharged. sec. 107.. 424
  Action upon not defeated, when, sec. 108........... 424
  Answerable for reappearance in case of new indictment, sec. 215........ 443
  Included in record on change of venue, sec. 231......... :. 446
  Duty of witnesses on change of venue, sec. 234....... 447
  Taking of bail consists in acceptance of, sec. 238................ 448
  Who may take, sec. 248.......... 450
  To be certified to clerk, sec. 249 . .. 450
  To be recorded by clerk, sec. 249..... 450
  When sheriff may take, sec. 251..... 450
  Proceedings by surety to surrender principal, secs. 252-254...... 451
  When and how forfeited, sec. 256.... 451
  Actions against sureties upon, sec. 258 451
  Re-arrest not to affect, sec. 259....... 451
  How taken, sec. 445. 486
  Lien of, on property, sec. 464........... 489
  Of defendant in probate or justice's court. secs. 502, 503.... 496
  Same, proceedings in case of breach of, sec. 504 496
  On appeal from probate or justice's court, sec. 510 497
  Of witnesses in same case, sec. 512... 497
  *No attorney, counselor or solicitor to be surety on, sec. 115 623
  By person bound over for bastardy, sec. 152....................... 634

RECORD.
  Of property attached, sec. 187........ 106
  Of verdict of jury, sec. 278 129
  Of transcript of judgment, lien of, sec. 310..................... 140
  Lien holders, etc., not parties in partition, unless of, sec. 379.... 164
  Of decree, etc., of partition, notice of, sec. 391.............................. 167

PAGE.

RECORD.
- On appeal, what to contain, sec 438. 178
- Certified copy of, evidence, sec. 542. 202
- Courts of defined, sec. 543 203
- Of indictments, sec. 178 437
- Of names of attorneys at law, sec. 105 620
- Of marks and brands, sec. 189 643
- Of conveyances, etc , sec. 258 661
- Same. notice of, sec. 259 661
- Of powers of attorney, sec. 261 662
- Same, revocation of, sec. 260 262
- Transcript of, evidence, secs. 264-267 662
- Satisfaction of mortgage, secs 271-273 663
- Of conveyances heretofore made, sec. 275 664
- Of county surveyors sec. 901 882
- Of county orders taken up, sec. 789 854
- Of liens kept by recorder, sec. 1373 1036
- Of declaration of sole trader, sec. 1434 1044
- Of quartz lodes, etc., sec. 1477 1054
- To be kept by notary public. sec. 1565 1075
- Of certificate of partnership, sec. 1600. 1084
- Of declaration, deed, mortgage, etc., evidence of, sec. 1663 1103

RECORDER.
- To file and keep copies of attachments, sec. 187 106
- Fees for same, sec. 187. 106
- To keep attachment book, and fees therefor, sec. 205 110
- To record attachment of live stock, sec. 226 114
- Transcript of judgment to be filed with, sec. 310 140
- Record orders, etc. as to homesteads, sec. 146 309
- Record decree of partition, sec. 331 350
- When to record certified copy, sec. 329 355
- Stealing or falsifying records, sec. 114 530
- Certificate of incorporation recorded by, sec. 446, p. 724, sec. 672, p. 805 sec. 678 809
- County clerk to be ex-officio, sec. 834 866
- To keep general index, sec. 835 866
- Recording book, duties as to, sec. 836, 867
- Endorse time of reception on instrument, sec. 836 867
- Keep plat book with index, and duties as to plats, sec. 837 867
- Not bound to perform duties till fees paid, sec. 837 867
- Index of each volume of records, sec. 838 867
- Copies and transcripts certified by, evidence, sec. 839 868
- May administer oaths and take acknowledgments, sec 840 868
- To keep attachment book, sec. 842 868
- Entries in same, and fees, sec. 842 868
- Liens of mechanics and others filed with, secs 1372, p 830, sec. 1394 1044
- Abstract and file liens, and fees for same, sec. 1373 1030
- Duties as to mining district records, and fees. sec. 1494 1057

RECORDS.
- Judgment book to be kept, sec. 304. 139
- Register of actions, sec. 534 201
- Of patents, receivers' certificates, etc., evidence of, sec. 542 202
- Grand jury to have access to, sec 149 432
- Of indictments, when may be inspected, sec. 180 437
- Embezzlement of punished, sec. 87 519
- Falsifying, destroying, etc., sec. 114 530
- Withholding from successor in office, sec. 116 531
- Defacing or destroying, sec. 173 548
- Of warrants, auditor to keep, sec. 118 625
- Of district court, deputy to keep, sec. 197 645

PAGE.

RECORDS.
- Of proceedings of county commissioners, sec. 832. 865
- Certified copies of, evidence; sec. 839 868
- Of mining districts, where deposited, sec. 1492 1057
- Same, evidence of, secs. 1492, 1493 1057
- See County Clerk, Corporation Record, Recorder, Town Sites.

RECTIFIER.
- See License.

REDEMPTION.
- Real estate sold under execution, etc., subject to, secs. 340, 341 151
- Right of, secs. 341, 342 151
- Time given for and manner of, secs. 342, 343 152
- Right of creditors, etc., sec. 343 152
- Notice of to sheriff, sec. 343 152
- Certificate to be recorded, sec. 343 152
- Payments, to whom made, sec. 344 153
- Proceedings to redeem, sec. 345 153
- Court may restrain waste pending, sec. 346 153

REDEMPTIONER.
- See Redemption.
- Who termed, sec 341 151
- When may redeem, secs. 342, 343 151
- Manner of redemption, sec. 342 151
- To show authority, sec. 345 153
- Rights as to restraining waste, sec. 346 153

REFEREE.
- Judgment upon trial by, sec. 280 130
- Same, appeal from, sec. 280 130
- May be appointed to take account, sec. 281 130
- Parties may agree to reference, secs. 283-285 131
- When court may appoint, sec. 284 131
- Oath of, sec. 285 131
- Who may be, sec. 285 131
- Objections to, sec. 286 132
- Hearing objections, sec. 287. 132
- Report of, sec. 288 132
- Same, judgment upon, how entered, sec. 288 132
- Exceptions to findings of, secs. 288, 289 132
- Judgment debtor to appear and answer before, sec. 351. 156
- Inquiry before as to property of judgment debtor, secs. 351-353 156
- Witnesses before in same, secs. 351-354 156
- Order of to apply property on execution, sec. 355 157
- Contempt of, how punished, sec. 357 157
- In partition, secs. 386-390 166
- Report in partition, sec. 390 167
- Action upon report of in partition, sec. 391. 167
- Sales by, how made and notice of, sec. 400 169
- To take security in partition, sec. 402 169
- Not to purchase at sale, sec. 408 170
- Report of sale in partition, sec. 409 170
- Penalty for illegal fee bill, sec. 509. 194
- Of claims against decedents, sec. 165 314
- See Referees.

REFEREES.
- Fees and expenses in partition, how paid, sec. 393 168
- Fees of, sec. 501 193
- What number may act, sec. 535 201

REFINERY.
- Exempt from taxation, when, sec. 1986 1212

REGISTER OF U. S. LAND OFFICE.
- Evidence of receipt of, sec. 542 202

PAGE.

REGISTER OF ACTIONS.
- Dismissal of actions entered in, sec. 242 118
- By whom and how kept, sec. 534 201

REGISTRATION.
- Of votes in incorporated city or town, sec. 441 720

RELATIVES.
- Entitled to guardianship of minor, sec. 419 376
- Incestuous marriage of, sec. 161 545
- To support pauper, sec. 1610 1086

RELEASE.
- Of property attached, sec. 198 108
- Of prisoner charged with contempt, sec. 588 212
- Of guardian, by ward, sec. 439 378
- Forgery, etc., of, punished, sec. 96 523

See Arrest and Bail.

RELIEF.
- See Poor.
- Limitations of actions, sec. 47 69

RELIGION.
- Person not believing in Christian, how sworn, sec. 694 241

RELIGIOUS WORSHIP.
- Disturbing, sec. 146 539
- Selling liquor near camp meeting, punished, sec. 152 541

REMAINDER.
- Posthumous child defeats contingent, sec. 280 664
- Same, takes limited, sec. 281 664
- Grants of, good without attornment, sec. 282 665

See Wills.

REMOVAL OF OFFICERS.
- Of executor or administrator, secs. 113-117 299
- Of guardian, secs. 426-428 377
- Proceedings for impeachment, etc., secs. 41-62 412
- Appointment to fill vacancy caused by, sec. 58 414
- For embezzlement, sec. 88 519
- For oppression, sec. 115 536
- For bribery, secs. 111-113 529
- For extortion, sec. 134 536
- For selling office, sec. 136 536

RENTS
- Administrator entitled to, sec. 127 303
- Grants of, good without attornment, sec. 280 664
- Powers of receiver over, sec. 233 117

See Limitations, Statute of.

REPEAL.
- Of acts conflicting with criminal law, sec. 286 585
- Of act to provide for formation of corporations, etc., approved Feb. 9, 1876, sec. 676 807

REPEAL PROVISIONS.
- What the compiled statutes embrace, sec. 2071 1235
- Repeal of acts embraced in compilation. sec. 2072 1235
- Accrued rights reserved, sec. 2073 1236
- Prosecutions and punishments, sec. 2074 1236
- Acts of limitation, sec. 2075 1236
- Arrangements and classifications of sections, sec. 2076 1236

PAGE.

REPEAL PROVISIONS.
- Acts passed since January 10, 1887, not effected, sec. 2077 1237

REPLEVIN.
- See Claim and Delivery.

REPLICATION.
- To answer allowed in pleadings, sec. 83 79
- When answer contains new matter, sec. 94 83
- Verification of, sec. 96 84
- Allegations deemed admitted by, when, sec. 109 87

REPORT.
- Of referee, sec. 288 132
- Of referee in partition, sec. 390 167
- Judgment upon same and effect of, sec 391 167
- Recording copy, sec. 391 167
- Of sale in partition, to be made and recorded in county clerk's office, sec. 409 170
- Of appraisers of homestead, sec. 143 308
- Of commissioners in partition, sec. 303 350
- Of public administrator, sec. 243-345 335
- Of territorial auditor, secs. 124-127 626
- Of territorial officers to governor, sec. 139 630
- Of territorial treasurer, sec. 129 628
- Of governor on examination of treasurer's accounts, sec. 142 630
- Of county treasurer, sec. 1867 1176
- Of commissioners to assess damages for right of way to mines, sec. 1500 1059
- Of superintendent of public instruction, sec. 1861 1174
- Of county superintendent, sec 1870 1177
- Of trustees of schools, sec. 1885 1182
- Of district clerk, sec. 1886 1183

REPORTER OF SUPREME COURT.
- Appointment of, sec. 1991 1214
- Duties of, secs. 1992, 1993 1214
- To have copyright of reports, sec. 1994 1215

REPORTS.
- Of territorial and county officers, secs 2000-2003 1216
- Publication of auditor's and treasurer's, sec. 2000 1216
- Of county superintendent, sec. 2001 1216
- Of territorial superintendent, sec. 2002 1216
- Publication of territorial superintendent, sec. 2003 1216
- Provision to pay for printing, sec. 2004 1217
- Penalty for failure to report, sec. 2005 1217
- Of supreme court See Supreme Court.

See Corporations.

REPRESENTATIVE.
- Legal, when action continued in name of, sec 22 63
- Oath, form of, and how and when administereds sec. 1067 939

See Apportionment.

REPRESENTATIVES.
- May maintain action for causing death, sec. 14 62
- Personal. of decedent, defined, sec. 333 395

REPRESENTING.
- See Personating.

RESCUE.
- See Escape.

PAGE.

RESERVOIR.
See Dams and Reservoirs.

RESIDENCE.
One year necessary for divorce, sec. 1001 920
Time necessary for election, sec. 1007 923

RESIDENT.
Administrator must be, sec. 55 289
Executor must be, sec. 45 289

RESIGNATION.
Of administrator, sec. 106 298
Of guardian, sec. 400 373
Of officer elect, sec. 1036 932
To whom made, sec. 1045 434
Of members of legislature, sec. 1319 1013

RESISTANCE.
To prevent commission of offence, sec. 13 406
Names of person making, to be reported, sec. 19 407
Of officer in discharge of his duty, sec. 120 532

RES GESTÆ.
As evidence, sec. 622 223

RESCUE.
Of person arrested, sec. 74 418
Of person convicted, sec. 121 532
Of person charged or committed for capital offence, sec 122 533
Of person in custody on civil process, sec 125 533

See Escape

RESPITE, sec. 377 472

RESPONDENT
Term defined, sec. 420 174
On appeal from probate court, defined, sec. 448 181

RESTAURANTS.
See Licenses.

RESTRAINT.
Of person charged with offence, sec. 12, p. 405; sec. 71 418

RE-SUBMISSION.
To grand jury, secs. 210, 211-215 442

RETURN.
Of summons, sec. 71 75
Of personal property after judgment for, sec. 161 98
Same, to defendant giving bond, sec. 166 99
Of writ of attachment, sec. 203 109
Of execution, sec. 315 143
Court may order amended, sec. 562 206
Of sale of real estate of decedent, secs. 201, 202, p. 326; sec 209, p. 328; sec. 223 331
Estates by public administrator, sec. 343 358
Of writ of habeas corpus, sec. 1173 976
Neglect of sheriff to make, punished, sec. 1974 1209

REVENUE.*
Auditor to prosecute delinquent collectors of, sec. 120 625
Auditor to furnish governor and legislature information in regard to, sec. 123 626
Auditor to estimate and report, sec. 1128 961
County commissioners may set apart sinking fund from, sec. 781 851

PAGE.

REVENUE.
Taxes; for what purpose levied, sec. 1665 1107
Meaning of terms, sec. 1666 1107
What property to be taxed, sec. 1667 1108
Exemptions, sec. 1668 1108
Tax; how levied or voted, sec. 1669 1109
Rate of taxation, sec. 1670 1110
In whose name property listed, sec. 1671 1110
Who deemed owners, 1672 1111
Assessment at cash value, sec. 1673 1111
Assessment of stock, sec. 1674 1111
Assessment of railroad property, sec. 1675 1112
Insurance companies, sec. 1676 1113
Mines, sec. 1677 1114
Deductions from credits, sec. 1678 1114
Agents duty as to listing property, sec. 1679 1114
Stocks and stockholders, sec 1680 1115
Same, sec. 1681 1116
Same, sec. 1682 1116
Blanks to left with or mailed to owner, sec. 1683 1117
Assessment books, etc.; description of property, sec 1684 1117
Owner to deliver property list, sec. 1685 1117
What list shall contain, sec. 1686 1117
Form of oath, sec. 1687 1118
If owner fails to make list, assessor shall make same, sec. 1688 1118
Penalty for concealing, etc., property, sec. 1689 1119
Penalty for failure of duty by assessor, sec. 1690 1119
Duty of person having no property, sec. 1691 1119
Statements to be preserved, sec. 1692 1120
Assessment book to be delivered to clerk, sec. 1693 1120
School district to be numbered, sec. 1694 1120
Additional assessments, sec. 1695 1120
Lots to be separately assessed, sec. 1696 1121
Oath of assessor, sec 1697 1121
Equalization, sec. 1698 1121
Notice of meeting for equalization, sec. 1699 1122
Duplicate abstracts of assessments, sec 1700 1122
Penalty for failure of clerk to perform duty, sec. 1701 1122
Territorial board of equalization and their powers, sec. 1702 1122
Transcript of proceedings to be sent to county clerks, sec. 1703 1124
Tax list, sec. 1704 1124
Tax list to be placed in hands of treasurer, sec. 1705 1124
Collection of taxes, sec. 1706 1125
How collection enforced if owner removes, sec. 1707 1125
Treasurer to collect all taxes, sec. 1708 1126
Correction of errors in names; notices, sec. 1709 1126
Receipt for taxes, sec. 1710 1127
Payment to be noted, sec 1711 1127
Distraint for taxes, sec. 1712 1127
Lien upon personal property for taxes, sec. 1713 1127
Lien upon real estate, sec. 1714 1128
Expenses not to be paid by territory, sec. 1715 1128
One-fourth of taxes may be paid in warrants, sec. 1716 1128
Endorsement upon warrant, sec. 1717 1128
Time for paying taxes not to be extended, sec. 1718 1128
Proceedings in case of distraint, sec. 1719 1128
Duty of corporation, sec. 1720 1128
Penalty for violation by corporation, sec. 1721 1129

PAGE.
REVENUE.
Treasurer to have aid if resisted, sec. 1722.... 1129
When tax becomes delinquent, sec. 1723.... 1129
Omission of property erroneously taxed, sec. 1724.... 1129
When property subject to sale, sec. 1725.... 1129
List of property to be sold, sec. 1726.... 1130
Notice of sale, sec. 1727.... 1130
Affidavit of printer, sec. 1728.... 1131
Affidavit of treasurer, sec. 1729.... 1131
Penalty of ten per cent. for advertising, sec. 1730.... 1131
Jurisdiction of treasurer for purposes of sale, sec. 1731.... 1131
Tax sale, sec. 1732.... 1132
Return of sale, sec. 1733.... 1132
Manner of conducting sale, sec. 1734.... 1132
Payment of purchase price, 1735.... 1133
Sale not to be affected by mistake in name, sec. 1736.... 1133
What abbreviations may be used, sec. 1737.... 1133
Construction as to abbreviations, sec. 1738.... 1133
Treasurer's record of sales, sec. 1739.... 1133
Manner of conducting sale, sec. 1740.... 1134
Same, sec. 1741.... 1134
Errors may be corrected, sec. 1742.... 1135
Certificate of purchase, sec. 1743.... 1135
Certificate may be assigned, sec. 1744.... 1135
Payment of subsequent taxes, sec. 1745.... 1135
Treasurer's deed, sec. 1746.... 1136
Form of deed, sec. 1747.... 1136
Effect of deed, sec. 1748.... 1138
Name of grantee to be entered, sec. 1749.... 1138
Limitation of action for recovery in case of tax sale, sec. 1750.... 1138
Redemption, sec. 1751.... 1139
Redemption by minor, etc., sec. 1752.... 1139
Manner of making redemption, sec. 1753.... 1140
Quit claim, sec. 1754.... 1140
Order for redemption of money, sec. 1755.... 1140
Bond in case of lost certificate, sec. 1756.... 1141
Redemption of undivided interest, sec. 1757.... 1141
Certificate of redemption, sec. 1758.... 1141
Clerk to make entry of redemption, 1759.... 1141
Fee of clerk, sec. 1760.... 1141
Who may become purchaser, sec. 1761.... 1141
Proceedings in case of judgment declaring sale void, sec. 1762.... 1142
Recovery of tax paid by tenant, sec. 1763.... 1142
Lienholder may pay tax, sec. 1764.... 1143
Duty of clerk in case of transfer, sec. 1765.... 1143
Advertising delinquent tax list, sec. 1766.... 1143
Printer liable for error, sec. 1767.... 1144
Duty of clerk in case of false assessment, sec. 1768.... 1144
Unpaid taxes to be added to assessment, sec. 1769.... 1144
Penalty for violation, sec. 1770.... 1145
Evidence, sec. 1771.... 1145
Who may administer oath, sec. 1772.... 1145
Duty of clerk as to property sold, sec. 1773.... 1145
Auditor to prescribe forms, sec. 1774.... 1145
Responsibility of county for territorial tax, sec. 1775.... 1145
Settlements with treasurer, sec. 1776.... 1145
Taxes, to what use deemed appropriated, sec. 1777.... 1146
Cash book to be kept by treasurer, sec. 1778.... 1146

PAGE.
REVENUE.
Duplicate receipts, sec. 1779.... 1146
Entries in cash book, sec. 1780.... 1146
Railroad corporations to furnish lists of lands, sec. 1781.... 1147
Lists of lands to be procured from land office, sec. 1782.... 1147
How treasurer to be charged and credited, sec. 1783.... 1147
Additional assessments, sec. 1784.... 1147
Taxes due, etc., to be paid over, sec. 1785.... 1147
Duty of retiring treasurer, sec. 1786.... 1148
Special poor tax, sec. 1787.... 1148
Preparation of records, sec. 1788.... 1148
Laws repealed, sec. 1789.... 1149
Special poor tax, sec. 1790.... 1149
Miner to furnish a statement of gross receipts and expenditures, sec. 1791 1150
What expenditures may be included in statement, sec. 1792.... 1151
Net proceeds of mines to be taxed, sec. 1793.... 1151
Penalty for failure to furnish statement, sec. 1794.... 1151
Mining claim to be taxed at government price, sec. 1795.... 1152
See Taxes, Taxation, Assessor, Taxation of Mines, Insurance Companies.

REVERSIONS.
Grants of, good without attornment, sec. 282.... 665

REVIEW.
On appeal, sec. 440.... 179
In case of certiorari, secs. 561, 562.... 205
Writ of return and hearing, when had, sec. 583.... 209

REVIVAL.
Of judgment, sec. 347.... 153

REVOCATION.
Of submission to arbitration, sec. 474.... 187
Costs in such case, sec. 481.... 188
Of probate of will, sec. 33.... 282
Of will, secs. 435-455.... 380
Of power of attorney, sec. 262.... 662
Of appointment under sheriff or deputy, sec. 853.... 872

REVOCATION OF LETTERS TESTAMENTARY, OR OF ADMINISTRATION.
On petition, secs. 70-73.... 292
By failure to give bond, sec. 87.... 295
For refusing to give new sureties, sec. 92.... 295
By finding will, sec. 102.... 297
By order of court, for cause, sec. 106.... 298
For failure to perform duties, sec. 114.... 300
For failure to give notice to creditors, sec. 168.... 315
For failure to make return of sale, sec. 223.... 331
For neglect, waste, embezzlement, etc., sec. 258.... 339
For refusal to render exhibit, secs. 259-262.... 339

REWARD.
Governor may offer, sec. 459.... 488
How and to whom paid, sec. 460.... 488
Authority to governor to offer, sec. 284.... 584
For highway robbers, sec. 287.... 585

RIGHTS.
Of parties in partition, sec. 384.... 165
Affecting parties litigant, sec. 620.... 223

RIGHT OF WAY.
For development of mines, secs. 1495-1498.... 1058

PAGE.

RIGHT OF WAY.
Across lands of others, sec. 1495 1058
For ditch, tunnel, etc., sec. 1496 1058
Petition for, sec. 1497 1058
Citation to parties, sec. 1498 1059
Hearing, sec. 1499 1059
Commissioners to assess damages, sec. 1499 1059
Same, to be sworn, sec. 1500 1059
Examination and report, sec. 1500 1059
Other commissioners, sec. 1501 1059
Upon payment of damages, sec. 1502 1060
Appeals, sec. 1503 1060
Trial of appeals, sec. 1504 1060
Rights of appellee, sec. 1505 1060
Costs, secs. 1506, 1507 1060
Tender of payment of damages, sec. 1507 1060
See Eminent Domain, Corporations, Railroads, Mines.

RIOT.
Prevention of, and arrest for, sec. 16. 406
Power of governor, in case of, sec. 17. 406
Mayor, or other officer, sec. 18 406
Defined and punished, sec. 145 539
Officer to prevent, sec. 145 539
Officer failing to exercise his power to suppress, sec. 150 544
Sheriff to suppress, sec. 856 873

RIOTOUS ASSEMBLY.
Officer to disperse, sec. 16 406
Duty of governor, in case of, sec. 17 406

RIVER.
Offences committed on, where tried, sec. 57, p. 71, sec. 32 409
Obstructing, sec. 162 546

ROAD.
Obstructing, punished, sec. 162 546
See Roads and Highways.

ROADS AND HIGHWAYS.
Obstructing, etc., a nuisance, sec. 162 546
Sinking shaft or running drift near, punished, sec. 255 576
How condemned for railroad corporations, sec. 686 814
Powers of county commissioners over, sec. 756 844
Ditches, flumes, etc., across, to be kept in repair, sec. 1247 994
Levy of road tax and special road tax, sec. 1796 1154
Duty of road supervisor as to road tax, sec. 1797 1154
Penalty for failure to work on road, sec. 1798 1155
Receipts to be given for road tax, penalty, sec. 1799 1155
Supervisor to open road and keep same in repair, sec. 1800 1156
Drains, ditches, etc., for protection of roads, sec. 1801 1156
Removal of obstructions from road, sec. 1802 1157
Certificates for extra labor, sec. 1803 1157
Presumption as to real estate, sec. 1804 1157
Inspection of road and work, sec. 1805 1157
Record of roads, sec. 1806 1158
Contracts for road work, sec. 1807 1158
Apportionment of road fund, sec. 1808 1158
Notice of petition for laying out changing roads, sec 1809 1158
Appointment of viewers, sec. 1810 1158
Warrant to viewers, sec. 1811 1159
Service of warrant and oath of viewers, sec. 1812 1159
Duties of viewers, sec. 1813 1159
Majority of viewers may act; vacancy, sec. 1814 1160
Report of viewers, sec. 1815 1160

PAGE.

ROADS AND HIGHWAYS.
Consideration of report, sec. 1816 1160
Record of report, sec. 1817 1161
Opening of road, sec. 1818 1161
Payment of damages, sec. 1819 1161
Agreement as to damages, sec. 1820 1161
Appeal from award of damages, sec. 1821 1161
Width of highway, sec. 1822 1162
Proceedings in case all the owners petition, sec. 1823 1162
Private roads, sec. 1824 1162
Certified copy of order, sec. 1825 1162
Penalty for obstructing highway, sec. 1826 1163
Penalty for damaging abutments of bridge, sec. 1827 1163
Penalty for obstructing highway by ditch, etc., sec., 1828 1163
Disposition of fines, sec. 1829 1164
Duty of county attorney, sec. 1830 1164
Appointment; bonds and fees of supervisors, sec. 1831 1164
Repeal, sec, 1832 1164
Supervisor may employ laborers, etc., sec. 1833 1164
Payment of claims, etc., sec. 1834 1165
Penalty for issuing false certificates, sec 1835 1165
Penalty for failure of supervisor to perform duty, sec. 1836 1166
Proceeding if person has no taxable property, sec. 1837 1166
Employer to give list of employes, sec. 1838 1166
Duty of assessor, sec. 1839 1167
Contracts for bridges to be let to lowest bidder, sec. 1840 1167
Advertisement for bids, sec. 1841 1167
Apportionment of road fund, sec. 1842 1167
Temporary obstructions, sec. 1843 1168
Contracts to lowest bidder, sec. 1844 1168
Bids for keeping roads in repair, sec. 1845 1168
Bids, how made, sec. 1846 1168
Bids, when opened, sec. 1847 1168
Bond of contractor, sec. 1848 1168
Inspection of roads by supervisors, sec. 1849 1169
Contract for new road, sec. 1850 1169
Payments to contractors, sec. 1851 1169
Street tax in cities, sec. 1852 1170
Tax may be worked out, sec. 1853 1170
No road tax levied where street tax is collected, sec. 1854 1170
County commissioners take possession of, where tolls collected without charter, sec. 1857 1171

See Corporations, Road Tax, Toll Roads and Bridges.

ROAD FUND.
Directions for transfer to school fund, secs. 1941, 1942 1199

ROAD SUPERVISOR.
See Roads and Highways.

ROBBERS, HIGHWAY.
Governor authorized to offer reward for, sec. 287 585

ROBBERY.
Murder committed in attempting, sec. 21 505
Killing of person attempting, justified, sec. 32 506
Jurisdiction of trial for, sec. 34. 507
Assault to commit, sec. 59 511
Defined and punished, sec. 77 516
Buying goods obtained by, sec. 82 518
Bringing goods to territory obtained by, sec. 84 518

RULES.
Of practice in courts, sec. 523 1198

PAGE.

RULES.
- Of practice in probate court, sec. 323. 354
- Of interpretation of wills, secs. 476-508. 388
- Of practice in action against bail, sec. 257. 407

See Courts, Practice

SALARY OF.
- Territorial auditor, sec. 128. 628
- Territorial treasurer, sec. 134. 629

See Fees and Salaries.

SALE.
- Of property in claim and delivery, sec. 163. 98
- Perishable property, in attachments, sec. 192. 107
- Of property in attachment, sec. 194. 108
- Proceeds of, in attachments, when paid to defendant, sec. 197. 108
- Of boat under execution, sec. 219. 113
- Under judgment for possession of property, sec. 316. 144
- Property exempt from under execution, sec. 321. 145
- Of property under execution, secs. 331-334. 148
- Penalty for, without notice, sec. 333. 149
- Liability of bidder, secs. 335, 336. 150
- Same, of officer, sec. 337. 150
- Delivery of property, sec. 338. 150
- Certificate of purchase, secs. 338, 339. 150
- On foreclosure of mortgage, sec. 358. 158
- Of real property in partition, secs. 377-388. 164
- Of encumbered property in partition, sec. 400. 169
- In partition, when authorized, sec. 388. 166
- Notice of, in partition, sec. 400. 169
- Order for, in partition, sec. 401. 169
- Of tenancy, in partition, sec. 403. 170
- Terms and mode in partition, sec. 407. 170
- Report of, in partition, sec. 409. 170
- When court may order before judgment, sec. 541. 202
- Of property of decedent, secs. 171-224. 318
- Probate court may order, in partition, sec. 301. 349
- Appeal from probate to district, sec. 324. 354
- Of property of minor, secs. 376-391. 368
- Of stolen property, by officer, secs. 441, 442. 486
- Of liquors on election day, sec. 258. 577
- Of vote punished, sec. 1066. 939
- Of property for storage, sec. 1983. 1211
- Of unclaimed lots in town site, sec. 2026. 1224

See Execution, Redemption, Partition.

SALOON.
- Permitting minors to resort to, punished, sec. 241. 572
- Dancing, prohibited, sec. 256. 576

See Licenses.

SATISFACTION.
- Of judgment in attachment, secs. 194-197. 108
- Of judgment, how entered, sec. 311. 140
- Of mortgage, how entered, secs. 271, 272. 663
- Certificate of record, sec. 273. 663
- Of lien, etc., on record, secs. 1389, 1390. 1034

SAVINGS BANKS, TRUST DEPOSITS AND SECURITY ASSOCIATIONS.
- Not less than three persons may incorporate, sec. 532. 755

PAGE.

SAVINGS BANKS, TRUST DEPOSITS AND SECURITY ASSOCIATIONS.
- Capital stock, shall begin business when, sec. 533. 755
- Articles of association, sec. 534. 756
- Body politic, sec. 535. 756
- First meeting, sec. 536. 756
- Directors, sec. 537. 757
- Powers of the corporation, sec. 538. 757
- What property may be held, sec. 539. 737
- May call in remainder of stock; delinquent stock, sec. 540. 758
- Investment of capital, sec. 541. 758
- Insurance upon mortgaged property, sec. 542. 758
- How served with process, sec. 543. 759
- Transfer of shares of stock, sec. 544. 759
- Liability of officers and stockholders, sec. 545. 759
- Incorporation of savings bank, sec. 546. 759
- Articles of association, sec. 547. 759
- Contents of articles, sec. 548. 759
- Capital stock, sec. 549. 760
- Officers and trustees, sec. 550. 760
- Vacancies, sec. 551. 761
- Business and objects, sec. 552. 761
- Deposits, sec. 553. 761
- Investment of capital stock, sec. 554. 762
- Trustee, etc., not to borrow of association, salaries, sec. 555. 762
- Qualifications and bonds of trustees, sec. 556. 762
- By-laws, sec. 557. 763
- What real estate association may hold, sec. 558. 763
- Inspection of books, report, penalty for false oath, sec. 559. 764
- Contingent fund, sec. 560. 764
- Deposit made by minor or married woman, sec. 561. 764
- May deposit cash with another bank, sec. 562. 765
- Penalty for falsely assuming name of savings bank, sec. 563. 765

See Banks and Banking.

SCALES.
- For weighing gold, penalty for false, sec. 204. 557

SCIRE FACIAS.
- Writ of, abolished, sec. 410. 171

See Actions, Usurpation of Office.

SCHOOL AND COLLEGE SITES.
- Disposition of college sites for school purposes, sec. 1948. 1201
- Trustees may issue bonds and notes, when, sec. 1949. 1202
- To be set apart by officers of towns, sec 2028. 1224

SCHOOL DISTRICT.
- Fines and penalties paid to, sec. 1140. 963
- Boundaries of, duty of superintendent as to, sec. 1874. 1178
- Meetings, time of opening and keeping open, sec. 1883. 1181
- Employing teacher without certificate, deprived of money, secs. 1909. 1190
- Failing to maintain school three months, same penalty, sec. 1910. 1190
- Directions for transfer of road fund to, secs. 1941-1943. 1199

SCHOOL DISTRICT CLERK.
- Duty as to special school tax, sec. 1905. 1189
- Official oath of, sec. 1912. 1191
- Penalty for failure to perform duties, sec. 1917. 1192

PAGE.
SCHOOL FUND.
Fines and penalties paid to, sec. 228, p. 566, sec. 234, p. 569, sec. 183, p. 642, sec. 191, p. 644, sec. 1914 1191
Failure to pay over, punished, sec. 88 519
To receive penalties for not keeping highways in repair at ditch crossings, sec. 1248 994
Fines for violating Lord's day, to be paid to, sec. 1410 1039
Fines for dealing in warrants, etc., by officer, paid to, sec. 1585 1080
County treasurer to receive, keep separate account for, and pay over, sec. 1867 1176
Warrants on, how issued and paid, sec. 1867 1176
Report of, by treasurer, sec. 1867 1176
Apportionment of, sec. 1869 1177
Debts of districts paid out of, sec. 1888 1184
From sale of land, etc., now appropriated, sec. 1901 1187
County tax and fines for benefit of, sec. 1902 1187
County treasurer to transfer road money to school fund in certain cases, sec. 1941 1199
Authority for transfer, sec. 1942 1200
How such money applied, sec. 1943 1200
Proceeds of sale of town lots to constitute special school fund, sec. 1944 1200
How such fund expended, sec. 1945 1200
Authority to draw warrants on such fund, sec. 1946 1200
Election held to authorize its application to other purposes, sec. 1947 1201
Disposal of college and university town lots for school purposes, sec. 1948 1201
Trustees of school districts authorized to issue bonds in certain cases, sec. 1949 1202
Issuing bonds for building school houses, sec. 1950 1202
Manner and form of issuing such bonds, sec. 1951 1203
Notice of sale, and sale at not less than par, sec. 1952 1203
Faith of school district pledged for payment of principal and interest, sec. 1953 1203
Assessment to pay interest and constitute a sinking fund, sec. 1954 1204
Redemption of bonds, sec. 1955 1204
Payment of interest, sec. 1956 1204
Printing bonds and coupons, sec. 1957 1204
Penalty for neglect to pay over moneys derived from sale of bonds, sec. 1958 1204
Expenses of teachers' institutes paid from, sec. 1962 1205
Fines for letting hogs run at large paid to, sec. 1999 1216

See Brands and Marks, Trademarks and Brands.

SCHOOLS.
Adjoining districts may transfer children and moneys, sec. 1889 1184
Age of scholars entitled to admission, sec. 1890 1184
Appointment of district clerks and trustees, sec. 1873 1178
Apportionment of school moneys, secs. 1869-1907 1177
Apportionment of school moneys, sec. 1869, p. 1177, sec. 1907 1190
Same, moneys, how used, sec. 1908 1190
Board of trustees, powers of, sec. 1879-1885 1180
Boundaries of districts and duties of county superintendent, sec. 1874 1178
Clerk failing to take census, penalty, sec. 1917 1192

PAGE.
SCHOOLS.
Clerk of election to issue certificate to trustees, sec. 1880 1180
Compulsory education, secs. 1921-1924 1192
Contracts of school officers, when void, sec. 1913 1191
County superintendent, election, term, oath and bond, sec. 1868 1176
Same, county commissioners to fill vacancy in office, sec. 1868 1176
County superintendent to administer oaths to school officers, sec. 1872 1178
County tax, levy and collection of, sec. 1962 1187
Orders not receivable for same, sec. 1962 1187
Course of study and regulations, sec. 1861 1174
Disputes as to school matters, to whom referred, sec. 1918 1192
District in two counties, duties of officers and teacher, sec. 1878 1179
Disturbance of school or school meeting, sec. 1916 1191
Duty of county officers respecting fines, sec. 1963 1188
Education of children of African descent provided for, sec. 1892 1185
Election of school trustees, sec. 1880. 1180
Fees of clerk for taking census, sec. 1886 1183
Fines and penalties donated to, sec. 255 576
Fines and penalties, how collected and paid over, sec. 1914 1191
Fines, etc., set apart to, sec. 1902 1187
Forfeit on failure to report, sec. 1871 .. 1177
Forms of diplomas and certificate and school register furnished officers, sec. 1862 1175
High schools, how established and supported, sec. 1904 1188
Judgments against and debts of district, sec. 1888 1184
Moneys of new district formed from old one, how apportioned, sec. 1871. 1179
Montana school law, secs. 1861-1921 ... 1174
See Superintendent of Public Instruction, secs. 1861-1866 1174
"Montana School Law" defined, sec. 1921 1192

See Teachers' Institute.

Moral and patriotic instruction, sec. 1900 1187
New district, how organized, sec. 1882 1181
Same, hour of opening and time kept open, sec. 1883 1181
New districts, how formed, sec. 1875. 1178
New districts, rights to moneys and taxes, and when vacated, sec. 1876 .. 1179
No district to receive moneys unless legal teachers employed, sec. 1909 .. 1190
Nor unless three months school be held, exception, sec. 1910 1190
Oath of school officers, sec. 1912 1191
Penalty for insulting teacher in presence of school, sec. 1915 1191
Powers and duties of county superintendent, sec. 1870 1177
Printing and binding, execution and payment for, sec. 1920 1192
Proceeds of sale of lands, how disposed of, sec. 1901 1187
Property, title to, and how sold and conveyed, sec. 1879 1180
Records and duties of district clerks, sec. 1884 1182
Rules for government of pupils, sec. 1895 1185
Sectarian or partisan education prohibited, sec. 1893 1185
School census taken by district clerk, sec. 1886 1183
School day, length of, sec. 1894 1185
School funds, duties of treasurer as to, sec. 1867 1176

PAGE.

SCHOOLS.
School lots, trustees may purchase or sell, when, sec. 1885............ . 1182
School officers to deliver papers, etc., to successors and penalty, sec. 1911. 1191
School year defined, sec. 1919..... 1192
Special taxes, levy and collection of, sec. 1906.................. 1190
Special taxes, provisions as to, sec. 1905...... 1189
Supplies for district provided by clerk, sec. 1887 1184
Teachers, duties and restrictions as to payment of, secs. 1896, 1897... ... 1185
Teachers, examinations and certificates, secs. 1925, 1926... 1193
Term of office of same, sec. 1881...... 1181
To be taught in English language, sec. 1891...... 1184
Trustee and clerk in new district, sec. 1873.................. 1178
Trustee may administer oath to member elect, sec. 1880.... 1180
Warrants for, how issued and paid, sec. 1867..................... 1176
Warrants on school fund, sec. 1870.. 1177
What shall be taught, sec. 1892... ... 1185
Who qualified to vote at elections for trustees, sec. 1880.. 1180

See School Text Books, Teachers' enstitutes.

SCHOOL TEACHER.
School trustees to employ, dismiss and govern and require to keep school register, sec. 1885............ 1182
Judgment in favor of, liability for, sec. 1888............................ 1184
Duties of, sec. 1896, 1897............. 1186
Contracts of, school month defined and holidays. sec. 1898............. 1187
Authority over pupil, sec. 1899..... . 1187
Powers and duties as to pupils, secs. 1899, 1900...... 1187

See Teachers' Institutes.

SCHOOL TEXT BOOKS.
Text books to be uniform throughout the territory, sec. 1928 1194
Time of adoption limited, sec. 1929.. 1195
Duties of publishers and dealers defined, sec. 1930...................... . 1195
Method of procedure in event of failure to fulfill bonds, sec. 1931....... 1196
Titles of text books and prices, sec. 1932........... 1197
Price list to be publicly posted, sec. 1933.... 1197
Use of other text books prohibited, sec. 1934........ 1197
Duties of school officers, sec. 1935 ... 1198
Supplementary books and prices, sec. 1936.............................. 1198
This chapter may be amended or repealed, 1937...................... ... 1198
School text book commission, sec. 1938 1198
Duties of commissioners, sec. 1939 . 1198
Duties of superintendent of public instruction and compensation of commissioners, sec. 1940 1198

SCHOOL TRUSTEES.
College sites transferred to, sec. 1948. 1201
Authority to borrow money, sec. 1949. 1202
To draw on school fund derived from sale of town lots for buidings, etc., sec. 1946 1200
Order and hold election for division of same, sec. 1947..... 1201

SEAL.
What courts shall have, sec. 527. . . 199
Keeper of same, sec. 528 199
Manner of fixing, sec. 529............ 199
Courts take notice of, when, sec. 643. 228

PAGE.

SEAL.
Penalty for counterfeiting, sec. 106 . 526
Corporation may have, sec. 482... .. 735
Of county commissioners, sec. 759... 845
Same, kept by county clerk, sec. 832. 865
Of superintendent of public instruction, sec. 1861..................... . 1174

See Conveyances of Realty.
See Territorial Seal

SEALS.
Private, abolished, sec. 1963.. 1206

SEALED VERDICT, sec. 269......... 127

SEARCH WARRANT.
When and how issued, sec. 432....... 485
How directed, and contents, sec. 437. 485
Of place or house, sec. 434..... 485
Executed by public officer, sec. 435.. 485
Person may be searched, sec. 436 ... 485

SECRETARY.
Of board of commmissioners for insane, secs. 1208-1209................ 983

See Corporations.

SECRETARY OF THE TERRITORY.
Duties respecting auditor,s and treasurer's bonds, secs. 137, 138...... 629
To file reports of the governor, sec. 143... 631
Certificate of incorporations filed with, sec. 446 724
Duties as to same, sec. 447 725
To approve bond of territorial superintendent, sec. 1593.................. 1082
May take acknoweledgments, affidavits, and depositions,, administer oaths, and fees for same, sec. 1965................................... 1206
To make copies of laws, etc., and fees for same, sec. 1966.............. 1207
Countersign and affix seal to commissions, sec. 1967..................... 1207
Evidence of copies certified by, sec. 1968.. 1207
Fees of, secs. 1965-1969............. ... 1206
Entitled to supreme court reports, sec. 1995............................. 1215
To be custodian of territorial seal, sec. 1964......... 1206
To procure new territorial seal, sec. 2007... 1217
To destroy old seal, sec. 2007......... 1217

SECURITY.
In sale in partition, sec. 402........... 162

See Bail, Surety, Undertaking,

SECURITY ASSOCIATIONS.
See Savings Banks.

SEDUCTION.
Unmarried female may sue for, sec. 11............ 61
Suit by parent or guardian, sec. 12 . 61

SELF-DEFENCE
See Homicide.

SENTENCE.
Of imprisonment, sec. 372 472
Clerk to deliver certified transcript of judgment to sheriff, sec. 373..... 472
Of death, secs. 375, 376 472
How executed, secs. 376-378.......... 472
After respite, sec. 377.................. 472
Governor or court may prolong time or suspend execution of, sec. 379 473
Suspends civil rights of person, when, sec. 279......................... 583
Time of, how diminished by convict, sec. 308.......... 672

Page.
SERVANT.
Embezzlement by, sec. 92 ... 522
See Wage Workers.

SERVICE.
Upon new party to suit, sec. 27 ... 64
Of summons, sec. 71 ... 75
Of summons against minor, sec. 72 ... 76
On person of unsound mind, sec. 72 ... 76
Written admission of, sec. 78 ... 78
On non-resident, secs. 73, 74, p 97, sec. 745 ... 253
Time and place when to be stated. sec. sec. 79 ... 79
Of notice of appeal, sec. 422 ... 174
Proceeding when only had on part of defendants, sec. 459 ... 183
Of notices and motions, secs. 487-493 ... 189
Time of, how computed, sec. 536 ... 201
Of writ of certiorari, sec. 560 ... 205
Of writ of mandamus, sec. 577 ... 208
Of subpœna, sec. 656 ... 232
Of citation in probate court, sec. 319 ... 353
Of subpœna in criminal case, sec. 424 ... 482
On corporation, sec. 75 ... 78
By mail, sec. 76 ... 78

See Motions, Notices, Summons

SET-OFF.
In case of assignment, sec, 5 ... 61
How pleaded, sec. 89 ... 82
When improvements allowed as, sec. 369 ... 160
How pleaded in justice's court, sec. 780 ... 262

SETTLEMENT.
Of estate of decedent, secs. 254-272 ... 332
Of county treasurer, with county commissioners, sec. 146 ... 632
Of sheriff, with county commissioners, sec 967 ... 908

SHAM ANSWERS, sec. 102 ... 85

SHAFT.
Penalty for sinking within 20 feet of highway, sec. 255 ... 576

SHEEP.
See Animals.

SHEEP DISEASED.
Penalty for carrying parasite, sec. 277 ... 582

SHERIFF.
Action by, on indemnifying bond, sec. 533 ... 200
Arresting defendant, secs 125, 126 ... 91
Bond and oath of, sec. 912 ... 886

See Accounts and Settlements of County Officers, secs. 967-969 ... 908

Bond, condition of, sec. 850 ... 872
Bond to be recorded, sec 1587 ... 1080
Breach of bond by misconduct of jailor or deputy, sec. 859 ... 873
Same, action for, against whom prosecuted, sec 860 ... 873
Coroner to exercise duties of, when, secs. 856, 857 ... 875
Same, or may issue warrant to, when, sec. 877 ... 877
Deed by, sec. 343 ... 152
Deputies, appointment of, etc., sec. 852 ... 872
Deputies' appointment, how made and revoked, sec. 853 ... 872
Duties as to election to fill vacancy in legislature, sec. 1322 ... 1014
Duties as to execution from justice, secs. 802, 803 ... 267
Duties as to money received for bail, secs. 139, 140 ... 94

Page.
SHERIFF.
Duties as to service of notice in same, sec. 159 ... 97
Duties if property claimed by third party, secs. 170, 171 ... 100
Duties in case of garnishment, sec. 188 ... 106
Duty as to property levied upon, if claimed by third party, sec. 320 ... 145
Duty as to property recovered from seizure and returned, sec. 163 ... 98
Duty as to service and return of summons, sec. 71 ... 75
Duty of enforcing execution, secs. 331, 339 ... 148
Duty of, in return of order for arrest, sec 134 ... 93
Duty if property concealed, sec. 168 ... 99
Duty in case of contempt of court, secs. 587, 589 ... 212
Duty in making arrest, sec. 127 ... 92
Duty in regard to insane person, sec. 1215 ... 985
Duty when attached property claimed by third party, sec 193 ... 107
Election, bond, and term of office, sec. 676 ... 807
Execution directed to and requisites of, secs. 313-318 ... 142
Failing to arrest parties and prevent duel, penalty for, sec. 153 ... 541
Fees of, secs. 1076, 1077 ... 945
How to collect balance due in attachment case, sec. 195 ... 108
How to keep property, sec. 169 ... 99
In case of insane convicts, duties, sec. 312 ... 673
Same, fees for, sec. 314 ... 674
Inventory and return in attachment, sec. 191 ... 107
Itemized bill of fees of, required, sec. 521 ... 197
Liability as bail, sec. 143 ... 94
Liability for neglect or misconduct, sec. 883 ... 874
Same, for illegal fees, sec. 864 ... 874
Limitation of actions against, secs. 43-45 ... 69
May arrest defendant on summons from justice, when, sec. 746 ... 254
May arrest defendant when authorized by bail, sec. 131 ... 92
May attach boats, sec. 215 ... 112
May execute process received before term expired, sec. 858 ... 873
May give notice of justification of bail, sec. 135 ... 93
Must release property from attachment, when, secs. 198, 199 ... 108
Same, duties and liability as to, sec. 199 ... 109
Not to act as attorney, sec. 862 ... 874
Not to buy or deal in warrants, penalty, sec. 1127 ... 961
Not to deal in warrants or indebtedness, secs. 1579, 1580 ... 1079
Not to serve more than two terms, sec. 849 ... 872
Oath and bond of appointee, sec. 1590 ... 1081
Office, where and when kept open, sec. 911 ... 886
Paper to be served on, where left, sec. 861 ... 874
Pay unclaimed witness and jury fees to county, sec 1103 ... 594
Same, other duties in regard to, secs. 1104-1106 ... 954
Same, penalty for failnre to pay over, sec. 1107 ... 954
Penalty for illegal fee-bill, sec. 509 ... 194
Penalty for neglect, sec. 911 ... 886
Penalty for receiving illegal fees, sec. 134 ... 536
Penalty for selling without notice, sec. 333 ... 149
Possession in claim and delivery, secs. 158, 159 ... 97
Proceedings against, as bail, sec. 144 ... 94

PAGE.

SHERIFF.
Proceedings for default, sec. 140 ... 94
Proceedings to collect and pay over judgment, in attachment, sec. 194 ... 108
Receipt to third party paying judgment, effect of, sec. 352 ... 156
Records and papers open to public, sec. 911 ... 886
Sale by, how made, secs. 334-336 ... 150
Sale by, sec. 163 ... 98
Sale of perishable property in attachment, sec. 192 ... 197
Summons in forcible entry and detainer directed to, sec. 718 ... 247
To admit attorney to client in prison, sec. 114 ... 623
To appoint jailer, sec. 1271 ... 1000
To collect cost bill issued by clerk, sec. 520 ... 197
To deliver property to defendant, when, sec. 166 ... 99
To deliver property, etc., to successor, sec. 857 ... 873
To execute process and attend court, sec. 855 ... 873
To execute process of probate court, and fees for same, sec. 458 ... 183
To file notice, undertaking and affidavit, sec. 171 ... 100
To have charge of jails and prisoners, sec. 854, p. 873, sec. 1270 ... 1000
To preserve peace, etc. sec 856 ... 873
To return summons with writ of attachment, sec. 203 ... 109
To serve and return auditor's notice to delinquent, sec. 125 ... 627
To serve summons in justice's court, sec. 719, p. 247, sec. 744 ... 250
To summon additional jurors in civil case, sec. 255 ... 122
To take personal property in action to recover same, when, sec. 159 ... 97
Under sheriffs, sec. 851 ... 872
Vacancy, how filled, sec. 1589 ... 1081
When exonorated from bail bond, sec. 138 ... 94
When liable for property, sec. 160 ... 98
Writ of attachment to be directed to, sec. 184 ... 105
Same, how executed, sec. 186 ... 105

See Jails and Prisoners, Jurors, Execution, Officers.

SHERIFF IN CRIMINAL ACTIONS.
May command the peace and arrest offender, secs. 14, 15, 16 ... 406
Right to posse comitatus, sec. 19 ... 407
To report names of persons resisting, sec. 19 ... 407
To summon grand jury, sec. 142 ... 431
May take recognizance from person committed for offence, sec. 251 ... 450
Duty of on change of venue, sec. 227 ... 445
To execute judgment against criminal and authority therefor, secs. 372, 373 ... 472
Power over convict, sec. 374 ... 472
Duties of respecting convict, sec. 375 ... 424
Duties in case of insane convict, secs. 380-383 ... 473
Same, as to female convict presumed pregnant, sec. 384 ... 474
To execute sentence of death after delay, when, sec. 388 ... 474
To make and present fee bill, sec. 421 ... 481
May make complaint against offender, sec. 476 ... 493
Penalty for refusal or neglect to perform duty, sec. 519 ... 498
Penalty for bribery of, secs. 112, 113 ... 529
Stealing or falsifying records, penalty, sec. 114 ... 530
May be removed for inhumanity or oppression of prisoner, sec. 115 ... 530
Aiding escape of convict, penalty, sec. 123 ... 533

PAGE.

SHERIFF IN CRIMINAL ACTIONS.
Aiding or permitting escape of prisoner, sec. 127 ... 534
Refusing to arrest or receive person charged with offence, sec. 128 ... 534
Duty in case of prize fight, sec. 151 ... 540

SHOWS.
See Licenses.

SHORT-HAND REPORTER.
See Stenographer.

SICKNESS.
Of juror, sec. 264 ... 126

SIGNATURE.
Courts take judicial notice of official, when, sec. 643 ... 228
Genuineness of when admitted in action, sec. 775 ... 260
To include mark and how witnessed, sec. 539 ... 201
Official, penalty for counterfeiting, sec. 106 ... 526
Of speaker of house, omitted in publishing laws, sec. 210 ... 649
How made by mark, sec. 1970 ... 1207

SILVER.
Penalty for counterfeiting, secs. 107, 108 ... 527

SILVER BOW COUNTY.
See County Boundaries.

SINKING FUND.
May be set aside by county commissioners, sec. 781 ... 851

SISTER.
Inheritance by, sec. 534 ... 295

SLANDER.
Pleadings in, sec. 107 ... 86
Defence of, sec. 108 ... 86

See Actions, Pleadings.

SMALL-POX.
Penalty for inoculating, sec. 223 ... 562

SNYDER, SAMUEL.
Act for relief of, secs. 1, 2 ... 1238

SOCIETIES.
Limitation as to devises to, sec. 473 ... 386
Wearing badge of, sec. 119 ... 531
See Corporations.

SOLE TRADER.
How married woman may become, sec. 1434 ... 1044
Declaration, how made and recorded, sec. 1434 ... 1044
Rights of, sec. 1435 ... 1044
Responsible for maintenance of children, sec. 1436 ... 1644
Restrictions to amount of business, sec. 1437 ... 1045
Husband not responsible for debts of, sec. 1438 ... 1045

SOLDIER.
Penalty for selling liquor to, sec. 188 ... 552
Obtaining liquor, when out of uniform, secs. 189, 190 ... 552

SPECIAL ADMINISTRATOR.
When appointed, secs. 95, 96 ... 296
Persons entitled preferred, sec. 97 ... 296
Bond and oath of, sec. 98 ... 296
Duties of, secs, 99, 100 ... 296
To render account, sec. 101 ... 297

SPECIFIC PERFORMANCE.
Of conveyance and contracts by administrator, sec. 221 ... 652

PAGE.
Of contract of decedent for conveyances, sec. 236-246 334

SPIRITUOUS LIQUORS.
See Liquors.

STABLE KEEPERS.
Animals left in charge of, penalty for using, sec. 271 581
See Animals.

STAGE COMPANIES.
See Licenses.

STALLION.
Jack or unaltered mule not to run at large, secs. 272, 273 581
May be castrated, sec. 273 581

See Animals.

STATEMENT.
On motion for new trial, sec. 298 135
On appeal, what to contain, sec. 432. 177
Notice of, to opposite party, sec. 432. 177
Amendments to, how filed and served sec. 432 177
How settled and when waived, sec. 433 177
Settled and authenticated, sec. 435.. 178
Copy annexed to transcript, sec. 436. 178
On confession of judgment, sec 466.. 184
How made and signed, sec. 465 ... 184
To be filed with clerk, sec. 467 ... 185
Defendant may make, on criminal examination, sec. 93 422
Same, to be filed with clerk of court, sec. 110 424

See Appeals, New Trials, Town Sites.

STATISTICS.
Territorial auditor to collect, sec. 1971 1208
Certain officers to aid in collecting, sec. 1972 1208
Duty of assessors, secs. 1973, 1974 1208
County clerk to return to auditor, sec. 1975 1209
Fees of officers concerning, sec. 1975. 1209
Penalties for neglect of duty, sec. 1976 1210

STATUTE.
Action upon, secs. 42-45 69
Certain words construed, sec. 539 201
Construction of, sec. 630 225
Interpretation of, sec. 638 226
Of frauds, secs. 212-234 651
Of limitations, secs. 28-55 65
How pleaded, sec. 105 86
How proved, sec. 646 229

See Limitations—Construction of Statutes.

STAY.
Of proceedings on motion for new trial, sec. 310 140
Of execution, on appeal, secs. 424-428. 175
Same, direction sale or possession of realty, sec 427 175
Of proceedings in inferior courts, sec. 431 177
Of execution, on judgment appealed from, sec. 455 182

STEALING.
See Larceny.

STENOGRAPHERS.
Appointment and term of office, sec. 1977 1210
Duties, sec. 1978 1210
Amount to be paid by each party in civil action, sec. 1979 1210

PAGE.
STENOGRAPHERS.
Salary, sec. 1980 1211
To note point of exception, sec. 1981.. 1211

STOCK.
Register of auction sale of and directions for keeping, secs. 25-28 593
Penalty for not keeping, sec. 28 593
Blooded, exempt from tax one year, sec. 29 593
Penalty for illegal driving over bridge, sec. 246 659
Blooded pedigree, sec. 30 593

See Animals, Corporations.

STOCK COMMISSIONERS.
See Animals.

STOCK-GROWERS' ASSOCIATION.
See Corporations.

STOCK YARDS.
See Licenses.

STOLEN PROPERTY.
Buying or receiving, secs. 82, 83 518
Bringing into territory, secs. 84, 85... 518
Duty of officer holding, sec. 437 485
Duty of magistrate, secs. 438, 439 485
Delivery of to owner on payment of expenses, secs. 439, 440 485
Sale of, secs. 441, 442 486
Description of in case of sale, sec. 443 486

STORAGE AND COMMISSION.
Authority and direction as to sale of goods for charges, sec. 1983 1211
Title vested in purchaser, sec. 1984... 1212
Balance of proceeds paid to owner, sec 1985 1212

STRAP GAME.
Prohibited, sec. 208 558
Keeper of place where allowed punished, sec. 210 559

STREAMS.
Obstruction of, sec. 162 546
Obstructing fords across, secs. 226, 227 565

See Corporations, Irrigation, Water Rights.

STREETS AND ALLEYS.
Obstruction of, sec. 162 546
How condemned for railroad corporations, sec. 686 814

SUBMISSION.
Of controversy without suit, sec. 468. 185
Same, to arbitration, sec. 472 186

SUBORNATION OF PERSURY, sec. 109 528

SUBPŒNA.
May be issued for witness in another county in criminal case, sec 431 483
What may require, sec. 654 231
How issued, sec. 655 232
Service and fees of, sec. 656 232
Same, if witness concealed. sec. 657.. 232
Duty of witness served, sec. 659 233
Duty of witness on stand, sec. 660 233
Punishment for contempt, sec. 661... 233
Liability of witness to party injured, sec. 662 233
Order for examining prisoner, sec. 665 233
Affidavit for order, sec. 666 234
Production of prisoner as witness, sec. 667 234
Justices may issue, sec. 818 271
Magistrate to issue on criminal complaint, sec. 79 419

PAGE.

SUBPŒNA.
- Clerk to issue when required by grand jury, sec. 136.... 430
- Penalty on disobeying, sec. 137.... 430
- When issued in criminal action, sec. 416.... 480
- Person indicted entitled to, sec. 427.. 482
- On trial of contest of election, sec. 1015.... 925

See Witnesses.

SUBSTITUTION.
- Of parties in suit, secs. 22, 23.... 63

See Parties, Pleadings.

SUCCESSION.
- Term defined, sec. 531.... 395
- To whom property of intestate passes, sec. 532.... 395
- Personal representative defined, sec. 533.... 395
- Distribution and order of succession, sec. 534.... 395
- When estate escheats to the territory, sec. 535.... 397
- Of whom illegitimate child is an heir, sec. 536.... 397
- Of illegitimate child dying intestate, sec. 537.... 397
- Degree of kindred, sec. 538.... 397
- Lineal and collateral consanguinity defined, sec. 539.... 398
- Division of lines, sec. 540.... 398
- Degrees of direct line, sec. 541.... 398
- Collateral line, how reckoned, sec. 542.... 398
- Kindred of half blood, inheritance of, sec. 543.... 398
- Advancement to lineal descendant, sec. 544.... 398
- Rule in receiving advancement, sec. 545.... 398
- When gift or grant made as advancement, sec. 546.... 399
- Advancement, how valued, sec. 547. 399
- Advancement, consideration of, in distribution, secs. 548, 549.... 399
- To whom property goes on death of wife, sec. 550.... 399
- Distribution of community property, sec. 551.... 399
- Inheritance by right of representation, sec. 552.... 400
- Right of succession of alien and foreigner, sec. 553.... 400
- When succession not claimed, sec. 554 400
- When propertp escheats, sec. 555.... 400
- Charges against real property in escheat, sec. 556.... 400
- Liability of successors, sec. 557.... 400

SUCCESSOR.
- To action, in case of death of party, sec. 22.... 63
- Docket of justice deposited with, sec. 808.... 270
- May issue execution, sec. 809.... 270
- Of justice of the peace, sec. 810.... 270
- Liable for debts of decedent, sec. 557. 400
- In office, withholding records from, sec. 116.... 531
- Superintendent of public instruction, to deliver to, sec. 1866.... 1176
- School officer to surrender to, sec. 1911.... 1191

SUFFICIENCY OF PROOF.
See Evidence.

SUGAR FACTORY OR REFINERY.
- First erected and operated in territory exempt from taxation, sec. 1986.... 1212
- Term "factory or refinery" defined, sec. 1987.... 1213

PAGE.

SUGAR FACTORY OR REFINERY.
- Notice of intention to erect, effect of, and limitation as to commencement of work, sec. 1988.... 1213
- Preference of party first filing notice, sec. 1919.... 1213

SUIT.
- By trustee of express trust, sec. 6.... 61
- By married woman, sec. 7.... 61
- Officer may prosecute without bond, sec. 517.... 196
- Public administrator to institute, sec. 339.... 358
- Guardian to appear for ward in, sec. 368.... 366

See Actions.

SUMMONS.
- Against associates in business under common name, sec. 25.... 64
- How issued, 67, 68.... 74
- What shall contain and to whom directed, sec. 68.... 74
- Issue of alias, sec. 69.... 75
- Service and return of. sec. 70.... 65
- How served, secs. 72-74.... 76
- How served on corporation, sec 75 78
- May be sent by mail, sec 76.... 78
- Non-resident, how served, sec. 73, 74. 77
- Proof of service, sec. 78.... 78
- Written admission of service sufficient, sec. 78.... 78
- Voluntary appearance equivalent to service, sec. 80.... 79
- Against boats, sec. 214.... 112
- Same, service of, sec. 215.... 112
- Succeeded in judgment roll, sec. 306 139
- In suits for partition, sec. 381.... 164
- How served on unknown non-resident defendant. sec. 382.... 165
- Against joint debtor, sec. 459.... 183
- Same, requisites of, secs. 460, 461.... 183
- Same, when defendant may answer, sec. 462.... 184
- When to constitute written allegations. sec. 463.... 184
- In eminent domain, sec 603-607.... 216
- For interpreter, sec. 684.... 238
- In unlawful detainer, sec. 718.... 247
- Same, how served, sec. 719.... 247
- Actions in justice's courts commenced by, sec. 740.... 252
- In justices' courts, sec. 742.... 252
- Return of, sec. 343.... 253
- Manner of service, sec. 744.... 253
- By publication, sec. 745.... 253
- Order for arrest may be endorsed on. sec. 746.... 254
- Certificate of arrest may be endorsed on, sec. 749.... 255
- Date of issue and return of, entered on justice's docket, sec. 805.... 269
- From justice of the peace, when void, sec. 811.... 270
- County commissioners may issue, and authority of, sec. 777.... 850
- How served against county, sec. 749 843
- To indicted corporation, secs. 470, 471.... 490

SUNDAY.
- Court not to be opened on, sec. 531.. 199
- Excluded in computing time, when, sec. 536.... 201
- Bills of exchange, etc. falling due on, sec. 158.... 636
- Books of corporations not open on, sec. 471.... 731

See Lord's Day.

SUPERINTENDENT, COUNTY.
- Official bond to be recorded, sec. 1587. 1080
- Election, bond, oath and term of office, sec. 1868.... 1176
- Vacancy in office, how filled, sec. 1868 1176

PAGE.

SUPERINTENDENT, COUNTY.
Apportion school moneys and certify to district clerks, sec. 1869 1177
To visit schools, sec. 1870 1177
File and preserve report of superintendent, sec. 1870 1177
Keep record of official acts, sec. 1870 1177
Preserve records and surrender office to successor and file receipt, sec. 1870 1177
Distribute reports, sec. 1870 1177
Report to superintendent of public instruction, sec. 1870 1177
Examine teachers and give certificates, sec. 1870 1177
Fees of, for same, sec. 1870 1177
Enforce course of study and rules and regulations, sec. 1870 1177
Penalty for failure to report, sec. 1871 1177
May administer oaths, sec. 1872 1178
Appoint trustees, when, sec. 1873 1178
Duties as to boundaries of school district and map, sec 1874 1178
Duties as to forming new district, sec. 1875 1178
School trustee to report to, sec. 1885 1182
Officers to report fines and taxes to, sec. 1903 1188
Power to use school moneys, defined, sec. 1908 1190
Disputes referred to, sec. 1918 1192
College sites, transfers to be certified and former transfer valid, sec. 1948 1201
To hold teachers' institutes, sec. 1959 1205
To provide building and supplies, and expenses, how paid, sec. 1962 1205
To report to superintendent of public instruction, sec. 2001 1216
Penalty for neglect, sec. 2005 1217

SUPERINTENDENT OF PUBLIC INSTRUCTION.
To report to governor at end of term, sec. 139 630
May contract for education of deaf, blind and mute children, sec. 994 917
Official bond to be recorded, sec. 1586 1080
Office created, sec. 1588 1081
Vacancy in office, how filled, sec. 1590 1081
Oath and bond of appointee, sec. 1591 1081
Official oath and bond of secs. 1592, 1593 1082
Deliver beeks, etc., to successor, and penalty for refusal, sec. 1594 1082
Restrictions as to salary of appointee, sec. 1595 1082
Appointment, term of office, bond, powers and duties, sec. 1861 1174
May adopt course of study and rules of instruction, sec. 1861 1174
To have a seal, sec. 1861 1174
May authorize printing circulars, etc., sec. 1861 1174
Regulations, reports, etc., sec. 1861 1174
Report to governor to be printed and distributed, and contents of, sec. 1861 1174
Prepare forms and furnish school officers and teachers, sec. 1862 1175
Furnish diplomas, certificates and school registers for schools, sec. 1862 1175
To visit schools, and expenses, how paid, sec. 1863 1175
Place of office and salary, sec. 1864 1175
Necessary expenses, amount and how paid, sec. 1865 1175
Surrender office and property to successor, sec. 1866 1176
School trustee to report to, sec. 1885 1182
Disputes referred to, sec. 1918 1192
Certify as to transfer of college sites, sec. 1948 1201
Entitled to supreme court reports, sec. 1995 1215
Reports of, secs. 2002, 2003 1216
Penalty for neglect, sec. 2005 1217
See Schools, Printing.

PAGE.

SUPPLEMENTAL.
Complaint or answer, sec. 111 87
Proceedings to executions, sec. 350 155
Complaint in partition, sec. 316 161

SUPREME COURT.
Of appeals to, secs. 442-444 179
Costs allowed prevailing party in, sec. 495 192
May establish rules of practice, sec. 523 198
Judge may take acknowledgments, sec. 524 198
To have seal, sec. 527 199
When clerk to adjourn, sec. 531 199
Court of record, sec. 543 203
Writs of review, mandate, and prohibition, return and hearing of, sec. 583 209
Sessions of, when and where to be held, sec. 697 242
Jurisdiction of, sec. 697 242
Appeals in criminal actions, secs. 394-409 476
To examine applicants for admission to bar, sec. 104 620
May grant writ of habeas corpus, sec. 1166 975
Duties and power of judge in such case, sec. 1167 975
Time of holding terms, sec. 1990 1214
Reporter to be appointed, sec. 1991 1214
Duties, authority and fees of reporter, secs. 1991-1993 1214
Printing and binding reports, sec. 1993 1214
Reporter to have copyright, sec. 1994 1215
Disposition of copies of reports, secs. 1995 1215

See Appeals, District Courts.

SURRENDER.
Of defendant arrested in civil action, 130 92
Same, manner of, sec. 131 92

SURETIES.
May be included in action, sec. 20 63
What may set up in answer, sec. 117 88
On undertaking for arrest, 123 91
Affidavit of, sec 124 91
On undertaking for bail in civil action, sec. 129 92
May surrender defendant, sec. 130 92
Manner of surrender, sec. 131 92
Action against, on bail bond, sec. 132 92
Qualification to bail bond, sec. 134 93
On undertaking in replevin, secs. 159-165 97
Same, when to justify, secs. 160-166 98
Exception to, by defendant, sec. 160 98
For return of property in claim and delivery, secs. 166, 167 99
On undertaking in injunction, sec. 176 101
Same, justification of, sec. 176 101
In attachment, sec. 182 104
For release of attached property, sec. 184, p. 105, sec. 199 109
For release of boat attached, sec. 217 112
On undertaking of receiver, secs. 231, 232 116
May compel repayment from principal, sec. 348 154
On appeal, secs. 423, 424, p. 174, secs. 427, 428, 430 175
Same, justification of, sec. 430 176
On appeal from probate court, sec. 451 182
Notice to, on indemnifying bond, sec. 533 200
Time for justification of, etc., how computed, sec. 536 201
Affidavit of worth to accompany undertaker, sec. 546 202
For person arrested on attachment, sec. 588 212

PAGE

SURETIES.
- Of plaintiff on undertaking for arrest, sec. 774. 254
- For defendant arrested in civil action asking continuance, sec. 752... 255
- For replevin, in justice's court, secs. 765-767.......... 258
- In case of adjournment, sec. 784... . 263
- On appeal in justice's court, sec. 823.. 272
- On bonds of executors and administrators, sec. 75, p. 293; sec. 105....... 297
- Same, to justify, sec. 80..... 293
- Same, petition for new, sec. 84....... 294
- Examined as to worth, sec. 81 293
- Release of, sec. 90.................... 295
- When relieved, sec. 91..... 295
- Liability of, sec. 94.................... 296
- Not affected by resignation, sec. 106. 298
- Suit against for failure to pay to territorial treasurer, sec. 347... 360
- On bond of guardian, sec. 358 363
- May be discharged from same, sec. 402 374
- Limitation of actions against same, sec. 404.......... 374
- Provisions of civil practice act, applies to, sec. 408 375
- On bond of public administrator, sec. 561.......... 375
- Minor may sue without pre-paying costs, secs. 562, 563 401
- On undertaking to keep the peace, sec. 23.......... 407
- On undertaking of alleged offender in case of adjournment, sec. 86..... 420
- May surrender principal, and how, secs. 252, 253, 254.......... 451
- Of arsenel, arms, etc., secs. 91-93.... 617
- Attorney or counselor not to be, sec. 115.......... 623
- Territorial auditor, sec. 137.......... 629
- Territorial treasurer, sec. 138 629
- County commissioner, sec. 776....... 849
- County clerk, sec. 829.. 865
- Sheriff, sec. 849 872
- Coroner, sec. 865 875
- County treasurer, sec. 884 879
- Judgment against, as joint debtors, what may direct, sec. 1293 1005
- On appeal from assessment of damages for right of way to mines, sec. 1503.......... 1060
- On bond of contractor for territorial printing, sec. 1642......... 1096

SURGEON.
- Property of, exempt from execution, sec. 321 145
- Can not be witnesses when, sec. 650.. 230
- Witness at duel, sec. 17.... 503
- When to attend inquest, sec. 883. . 878
- Compensation in such case, sec. 883. 878
- See Licenses.

SURVEY.
- Of homestead, sec. 325 147
- Of real estate in suit, secs. 369, 370... 160
- Order for and damages, sec. 370....... 161
- Expenses of, in partition, sec. 393.... 168
- Of land taken for public use, sec. 602 216
- County surveyor to make, on application, sec. 900.......... 882
- Of mining claim, order for, sec. 376... 162
- Record to be kept, sec. 901............ 882
- Of town site, sec. 2013 1220

SURVEYOR, COUNTY.
- Election, bond and term of office, sec. 898.......... 882
- Assistants and deputies, appointment of, sec. 899 882
- Certificates of to be evidence, sec. 899.......... 882
- To execute survey required by court, sec. 900 882
- To keep records of surveys and plats, and furnish copies, sec. 901 882
- Vacancy, how filled, sec. 902.......... 883

PAGE.

SWINDLERS.
- Offences committed by, secs. 197-211.. 555

SWINDLING BY.
- Fraudulent conveyances, secs. 197-200.......... 555
- False representations, sec. 198 556
- False pretenses, sec. 199..... 556
- False weight or measure, sec. 201.... 556
- Removing or concealing property, secs. 202, 203.......... 557
- False gold scales, sec. 204 557
- Refusing to account for quartz, sec. 205 557
- Certain games, secs. 208, 209....... . 558

SWINE.
- Not to run at large, sec. 1996.... 1215
- Same in towns and villages, sec. 1997.......... 1215
- Fines and penalties, sec. 1998... 1215
- Fines to go to school fund, sec. 1999... 1216

TAVERN KEEPER.
- Lien of, for keeping animals, sec. 1394.......... 1035

TAXATION.
- Blooded stock exempt, when, secs. 29, 30.......... 593
- See Revenue.

TAXATION ON MINES.
- Annual statement to be made, sec. 1791.......... 1150
- Credit for expenditures, sec. 1792... . 1151
- Improvements not exempt, sec. 1792. 1151
- Tax on net proceeds, sec. 1793. 1151
- Penalty for failure to make statement, sec. 1794 1151
- Duty of assessor on failure to make statement, sec. 1795.......... 1151
- Board of equalization, sec. 1795 1151

TAX COLLECTOR.
- See Collector, Treasurer.

TAXES.
- Board of county commissioners to levy, sec. 756 844
- One fourth received in warrants and licenses, sec. 1126.......... 960
- Poor tax, sec. 1790.......... 1149
- Mines, annual statement of, secs. 1791, 1792.......... 1150
- Same, taxes on, how levied and collected, sec. 1793 1151
- Same, penalty for neglect of statement, sec. 1794.......... 1151
- Same, taxed at government price, sec. 1795.......... 1151
- Same, buildings, machinery, etc., taxed, sec. 1795.......... 1151
- School, levy and collection of, sec. 1902 1187
- Same, special, how levied, etc., secs. 1905-1906.......... 1189
- For expenses of improving school or college cities, sec. 1949. 1202
- See Revenue.

TEACHERS.
- Examination of, and certificate, sec. 1870 1177
- Superintendent may administer oath to, sec. 1872.......... 1178
- Of district in two counties, rights and duties, sec. 1878.......... 1179
- Same, certificate from one county sufficient, sec. 1878. 1179
- To attend institutes, sec. 1960........ 1205
- Pay for same, sec. 1961 1205
- Of high schools, how employed and paid, sec. 1904.......... 1188
- Effect of employing without certificate, sec. 1909.......... 1190

TEACHERS' INSTITUTES.
- Time and place of holding, sec. 1959.. 1205
- Teachers to attend, sec. 1960 1205

PAGE.

TEACHERS' INSTITUTES.
  Pay of, during same, sec. 1961 1205
  Expenses of, sec. 1962 1205

TELEGRAPH COMPANY
  See Corporations.

TENANCY.
  Sale of, in partition, sec. 403 170
  Value of, in such case, sec. 404 170
  In common, what constitutes, sec. 277 664

TENANT
  When landlord made defendant with, sec. 16 62
  Possession by, that of landlord, sec. 37 67
  Action against, etc., for waste, sec. 362 159
  Action by, for real estate, sec. 366 160
  Liable for damages to property after sale under execution, sec. 373 161
  Action for partition, sec. 377 164
  How summoned in partition, secs. 380, 381 164
  Judgment in partition binding on, sec. 391 167
  When not affected by same, sec. 392. 168
  For life or years, estate how set off to, sec. 395 168
  Rights of, on sale in partition, secs. 403, 404 170
  If unknown, interests protected, sec 405 170
  Proceedings against, in unlawful detainer, sec. 727 248
  Limitation of action for same, sec. 728 249
  Need not attorn to pass rents, etc., sec. 282 665
  Attornment to stranger, when void, sec. 283 665

TENANTS IN COMMON.
  May unite in action, sec 18 62
  How may commence or defend suit, sec. 21 63
  When property vested in legatees as, sec. 570 390
  When grantees become, sec. 277 664
  Right of action against each other, sec. 1295 1006

TENANTS IN SEVERALTY.
  May unite in action, sec 18 62

TENDER.
  Defendant making, not to pay costs, when, sec, 504 194

TENSE.
  Words in present, include past and future, sec. 539 201

TERM OF OFFICE.
  Of county officers, when to commence, sec. 1040 933

TERRITORIAL OFFICERS.
  Elected or appointed, sec. 1588 1081
  How vacancy filled, sec. 1590 1081
  Appointed, oath and bond of, secs. 1591, 1592 1081
  Predecessor to deliver books, etc, to, sec. 1594 1082
  When salary to commence, sec. 1595. 1082

  See Auditor, Governor, Secretary.

TERMS.
  Used in instruments, sec. 633 225
  Local or technical, sec. 633 225
  Definition of in criminal action, secs. 456, 457 488

  See Testimony.

PAGE.

TERRITORIAL AUDITOR.
  See Auditor.

TERRITORIAL OFFICERS.
  Bond for costs not required of, sec. 517 196
  Oath of, sec. 1067 939
  Bond and oath of, to be recorded, sec. 1587 1080
  Elected or appointed, sec. 1588 1081
  Vacancy, how filled, secs. 1589, 1590 1081
  Bond and oath of appointee, secs. 1591-1593 1081
  To deliver books, etc., to successor, sec. 1594 1082
  Restrictions as to salary of, sec. 1595. 1082

TERRITORIAL SEAL.
  Secretary authorized to procure new seal, sec. 2006 1217
  Old seal to be destroyed, sec. 2007 1217
  Secretary to be custodian of, sec. 1964 1206

TERRITORIAL TREASURER.
  See Treasurer.

TERRITORY OF MONTANA.
  Statute of limitations applies to, sec. 49 70
  Bond on prepayment of costs not required, sec 517 196
  Same, how paid, sec. 517 196
  Divided into judicial districts, sec. 698 242
  Unclaimed, share of estate paid to, sec. 308 351
  Property of aliens escheats to, when, sec. 554 400
  Same, reclaimed, subject to what charges and trusts, sec. 556 400
  Criminal prosecutions in name of, sec. 161 435
  Change of venue in criminal case, secs. 226-236 445
  To pay for transporting prisoners, sec. 1077 945

TESTAMENT.
  See Wills.

TESTAMENTARY DISPOSITIONS.
  To whom may be made, sec. 437 381
  When to vest, sec. 498 390
  How divested, secs. 499, 500 390

TESTIMONY.
  Of witness, when trial postponed, sec. 254 121
  In eminent domain, sec 608 218
  Persons not allowed to testify, sec. 648 229
  Persons disqualified as witnesses, sec. 649 230
  Of husband and wife, sec. 650 230
  Privileged communications, sec. 650. 230
  Same, as to public officer, sec. 651 230
  Of judge or juror, sec. 652 230
  Of parties to action, secs. 668-671 234
  Of adverse party, sec. 669 230
  Rebuttal of adverse party, sec. 670 234
  Adverse party refusing to testify, sec. 671 235
  Proceedings to perpetuate, secs. 686-692 239
  How taken in such case, secs. 686, 687 239
  Authority of person appointed, sec. 688 240
  Examination and return, sec. 689 240
  Presumptions in such case, sec. 690 240
  Use of deposition or copy, sec. 691 240
  Effect of deposition, sec. 692 241
  In unlawful detainer, sec. 722 247
  Trial may be adjourned on account of, when, sec. 782 262
  Commissioners on partition may take, sec. 302 350

PAGE.

TESTIMONY.
- In writing, on examination of offender, sec. 92 422
- Defendant discharged to testify, sec. 309 462
- Of accomplice, when not to convict, sec. 317 463
- At coroner's inquest, written and signed, sec. 873 876

See Evidence, Deposition, Trial, Wills.

TESTATOR.
- Debt due to, by administrator, sec. 122 302
- Estate of, liable for debts, secs. 210, 211 328
- Contract of, to convey land, how enforced, secs. 236-246 334
- Distribution of estate of, secs. 289-305 380
- What may devise, sec. 432 380
- Order in which property of, liable for debts, secs. 511, 512 392
- Legacies, when due and deliverable, secs. 515-522 393
- Legatees and devisees liable for obligations of, sec. 530 394

See Wills.

THANKSGIVING DAY.
- Judicial business prohibited on, sec. 531 199
- Bills and notes falling due on, sec. 158 636

THEATER.
- Not kept open on Lord's day, sec. 1406 1039

See Licenses.

THEFT.
- See Larceny.

TEN DICE GAME.
- Prohibited, sec. 208 558
- Keeper of place punished, sec. 210.... 559

THIMBLE-RIG GAME.
- Prohibited, sec. 208 558
- Keeper of place of, punished, sec. 210 559

THING IN ACTION.
- Assigned without prejudice to set off, sec. 5. 61

THIRD PARTY.
- Right to interplead, sec. 27 64
- Claim of, in replevin, sec. 170 100
- In attachment, sec 173 107
- In replevin before justice, sec. 765.... 258
- When paid for maintenance of ward, sec. 370 367

THREATS OR MENACES.
- Committing crime under, secs. 6, 7, 10, 11 501
- Marrying woman under, sec. 55 511
- To influence juror, sec. 130 535
- By letter, to extort money, sec. 64, p. 512, sec. 137. 536
- Disturbing peace by, sec. 141 537
- To hinder or influence voter, sec. 1063 939

THREE CARD MONTE.
- Prohibited, sec. 208 558
- Keeper of place punished, sec. 210.... 559

TICKET.
- Circulating as money, penalty, sec. 224 565

TIMBER.
- Action for cutting, secs. 363, 364 159
- Setting fire to, secs. 221, 222 562

TIME.
- Of commencing actions, secs. 29-55.... 65
- In which defendant to answer, sec. 68 74
- Same may demur, sec. 87 81
- When execution returnable, sec. 315. 143
- For filing papers on appeal, sec. 434.. 178
- Same may be enlarged, sec. 434 178
- Computation of, in serving papers, sec. 536 201
- Extension of, may be granted, sec. 536 201

TITLE.
- Suits regarding, who may unite in, sec. 18 62
- Legal, to real estate, presumes possession, when, sec. 32 66
- When alienation not to affect, sec. 374 161
- Paper having defective, when valid, sec. 537 201
- Perfection of, in eminent domain, sec. 610 220
- To real estate, not raised in justice's court, sec. 779 261
- See Evidence, Limitations.

TOLL FOR GRINDING GRAIN.
- Penalty for false measures, sec. 201... 556
- Rate established, sec. 2008 1218
- Mill owner, accountability of, sec. 2009 1218
- Penalty for illegal, sec. 2010 1218

TWO-CARD BOX.
- At faro game, prohibited, sec. 208 .. 558
- Keeper of place, punished, 210 559

TOLL ROAD COMPANIES.
- Right of eminent domain as to, sec. 600 215

TOLL ROADS AND BRIDGES.
- Neglect of owner to repair, sec. 233 .. 568
- Collection of toll prohibited, sec. 1855 1171
- Special permit to collect toll, sec. 1860 1172
- Contracts for payment of toll void, sec. 1856 1171
- County commissioners to take possession of, sec. 1857 1171
- Destruction of, sec. 1858 1171
- Refusal to surrender, sec. 1858 1171
- Obstruction or failure to repair, sec. 1859 1171
- Charter expiring, become public property, sec. 1859 1171
- Penalties, secs. 1858, 1859 1171

TOOLS.
- For counterfeiting, sec. 103 526
- Same, to be destroyed, sec. 103 526
- Conveying to convict, sec. 124 533
- Of burglar, possession of, sec. 174 549

TON.
- Legal definition of, sec. 2057 1232

TORT.
- Action for, where tried, sec. 59 72

TORTURE.
- Murder by, sec. 21 505

TOWN.
- How summoned, sec. 72 76
- Fire warden for, sec. 1139 963
- See Municipal Corporations.
- See Town Sites.

TOWN LOTS.
- Proceeds applied to school fund, sec. 1944 1200

TOWN PLATS.
- Record and index to be kept, sec. 837 867

TOWNSHIPS.
- Petition for new, sec. 757 845

PAGE.

TOWNSHIPS.
Change of organization, sec. 758 845
Plat, and record of, sec. 769 848
Description to be filed with secretary, sec. 773 848

See Elections.

TOWNSHIP OFFICER.
Penalty for failure to perform duties, sec. 927 889

TOWN SITES AND PLATS.
Directions for entry of, sec. 2011 1219
Restrictions as to same, sec. 2012 1220
Powers of officers entering, sec. 2012 1276
Survey and plat to be made, and accepted, sec. 2013 1220
Size of lots, sec. 2014 1220
Streets and alleys dedicated to public, sec. 2014 1220
Plat to be filed in recorder's office, sec. 2014 1220
Notice to claimants, sec. 2015 1221
Statements to claimants, requisites as to, secs. 2015-2017 1221
Rights of claimant, sec. 2018 1222
Deed, and duty of authorities, sec. 2019 1222
Fees of officers, sec. 2020 1222
Proceedings in contested cases, sec. 2021 1221
Appeals, sec. 2022 1223
Deed in contested cases, sec. 2023 1223
Deposit in filing claim, sec. 2024 1223
Same, paid to treasurer, sec. 2024 1223
Money may be borrowed for expenses, sec. 2025 1224
Unclaimed lots offered for sale, sec 2026 1224
When open to private entry, sec. 2026 1224
Books and papers delivered to successor, sec. 2027 1224
School and college sites, how set apart, sec. 2028 1224
Rights of prior occupant, sec. 2029 1225
Construction of sec. 2016, sec. 2030 1225
Plat or map of, town or village to be made, what it shall show, sec. 2031 1225
To be acknowledged, filed, etc., sec. 2032 1226
Monuments to be placed, and how, sec. 2033 1226
Duty of county clerk, fees, etc., sec. 2034 1226
What shall be evidence in courts, sec. 2035 1226
Public rights, sec. 2036 1226
Additions, how surveyed and platted, sec, 2037 1227
Plat to be recorded before offering lots for sale, sec. 2038 1227
How vacated, effect of partial vacation, sec. 2039 1227

TRADE.
Offensive, sec 162 546
Without license, punished, sec. 225 565

TRADE-MARKS AND BRANDS.
Fac simile to be filed and recorded, secs. 176, 177 641
Exclusive right to use, sec. 177 641
Penalty for using another's, sec. 178 642
Same, for branded second-hand packages, sec. 179 642
Fee of recorder, sec. 180 642
Powers of courts unimpaired, sec. 181 642
Fines go to school fund, sec. 183 642

TRANSCRIPT.
Of judgment from justice's docket filed in another county, sec. 310 140
Copy of statement annexed, on appeal, sec. 436 178
What to contain, on appeal, secs. 436-438 178

PAGE.

TRANSCRIPT.
On appeal from probate court, sec. 454 182
Of judgment from probate court, sec. 710 244
Of proceedings before justice, in change of venue, sec. 780 262
Of judgment from justice's court, sec. 800 266
On appeal from justice of the peace, sec. 824 272
Of record of appointment of administrator or executor, evidence of, sec. 108 298
On removal of property of ward from territory, sec. 397 371
On appeal in criminal action, secs. 397-401 476

TRAVELING MERCHANT.
See Licenses.

TREASON.
Trial of, sec. 295 459
More than one witness required, sec. 616 223
Evidence admissible on trial of, sec. 295 459

TREASURER.
See Corporations.

TREASURER, COUNTY.
Appointment of, to fill vacancy, sec. 145 631
Bond and oath of, sec. 912 886
Bond of county clerk, to be filed with, sec. 829 865
Books open to inspection, sec. 892 880
Collect special school tax, sec. 1906 1190
County orders, not receivable, sec 1902 1187
Deliver moneys, etc., to successor, sec. 894 881
Same, penalty, failure, sec. 894 881
Deputy appointment and duties, secs. 886, 887 879
Deputy, oath of, sec. 913 887
Duties as to school fund, sec. 1867 1176
Duty and liability as to deposit, sec. 236 117
Duty as to moneys of estates, sec. 344 359
Duty as to unclaimed witness and jury fees, sec. 1105 954
Election, bond and term of office, secs. 884, 885 879
Examination of books and accounts of, sec. 141 630
Ex-officio collector of taxes, sec. 895 881
Fees for same, sec. 1906 1190
File copy of notice with county clerk, sec. 793 855
Fines and taxes due school funds, paid to, sec. 1902 1187
Justice to pay fines to, sec. 522 498
Keep records of warrants presented, sec. 791 855
Not to deal in warrants, etc., secs. 1579, 1580 1079
Oath and bond of appointee, sec. 1591 1081
Oath of, as to county moneys, sec. 149 633
Official bond to be recorded, sec. 1587 1080
Pay moneys to territorial treasurer, sec. 792 855
Duty as to receipts for same, sec. 793 855
Pay orders in order of presentation, sec. 893 881
Penalty for neglect, sec. 911 886
Penalty for refusal to allow examination, sec 148 632
Post and file notice of payment of bonds, sec. 781 851

PAGE.

TREASURER, COUNTY.
- Post list of warrants payable, sec. 793 855
- Proceeds of town lots deposited with, sec. 2024 1223
- Quarterly settlements and reports of, secs. 146, 147 632
- Receive school tax and fines, sec. 1902 1187
- Records and papers open to puplic, sec. 911 886
- Register warrants and orders to whom, sec. 897 881
- Removed for neglect, sec. 145 631
- Report to county commissioners, sec. 789 854
- To keep accounts and settle with commissioners, sec. 892 880
- To receive and pay out moneys, sec. 891 880
- To record and cancel orders paid, sec. 789 854
- To refuse to redeem certain warrants, sec. 1580 1079
- To surrender office to appointee, sec. 145 631
- Transfer road fund to school fund, sec. 1941 1199
- Vacancy in office, how filled, sec. 1040 933
- Vacancy in office, how filled; sec. 889 880
- Vacancy in office, how filled, sec. 1589 1081
- When and where to keep office open, sec. 911 886
- When may assess property, sec. 896 881
- When official term begins, sec. 1040 933
- Who shall not be, sec. 890 880
  - See Accounts and Settlement of County Officers, secs. 967-977 908

TREASURER, TERRITORIAL.
- Apportionment and term of, sec. 596 1082
- Receipts for money of absent heirs, sec. 308 351
- Warrant for same, when drawn, sec. 311 351
- Duty as to proceeds of property, inherited by aliens, sec. 555 400
- General duties of, secs. 129-139. 628
- Register warrants, sec 129 628
- Report to auditor, sec. 129 628
- Give quarterly notices to pay warrants, sec. 130 628
- Office, place and furniture of, sec. 131 628
- Books open to inspection, sec. 131 628
- Reports of, sec. 132 629
- Receipts of, for moneys, sec. 133 629
- Salary of, sec. 134 629
- To inspect auditor's books, sec. 135 629
- May administer oaths and compel attendance of witnesses, sec. 138 629
- Bond of, sec. 138 629
- Books and funds examined by governor, sec. 139 630
- Removal for neglect, sec. 144 631
- Surrender office to successor, sec. 144 631
- When governor may appoint, sec. 144 631
- Bond and oath of appointee, sec. 144. 631
- Penalty for refusal to allow books examined, sec. 148 632
- Duties as to publication of marks and brands, sec 184 642
- To pay warrants, sec. 1123. 960
- Not to deal in warrants, etc., secs. 1579, 1580 1079
- Not to redeem certain warrants, sec. 1581 1079
- Oath of, sec. 1592 1081
- To deliver office to successor, sec. 1594 1082
- When not entitled to salary, sec. 1595 1082
- Entitled to supreme court reports, sec. 1995 1215
- Reports of, to be published, sec. 200. See Printing. 1216

PAGE.

TREE PLANTING AND ARBORICULTURE.
- The third Tuesday of May designated as Arbor day; proclamation of governor, sec. 2040 1228
- Increased valuation not to be taxed, sec. 2041 1228
- Reduced assessment by reason of tree culture, sec. 2042 1228
- Same, sec. 2043 1228
- Same, sec. 2044 1229
- Same, sec. 2045 1229
- Duty of assessor, limitation of reduction in assessment, sec. 2046 1229
- Duty of county clerk, sec. 2047 1229
- Recovery for damages by animals to trees, sec. 2048 1229

TREES.
- See Timber, Trespass.

TRESPASS.
- Limitation of action for, sec. 42. 69
- For cutting or injuring timber, sec. 663 159
- Measure of damages, sec. 364 159
- Executor or administrator may maintain action, sec. 227. 332
- When indictment not found for, sec 153 432

TRIAL.
- Of facts not put in issue by pleadings, sec. 3 59
- Place of, in civil action, secs. 56-63 71
- Change of venue by defendant, sec. 61 72
- Causes for change of venue, secs. 62, 63 72
- Change of place of, sec 63 72
- Duty of clerk or justice in case of change, sec, sec. 64 73
- After issue formed, secs. 246-250 120
- Issue of law, when arises, sec. 247 120
- Issue of fact, sec. 248 121
- Issue of law, how tried, sec. 249 121
- Issues of fact tried by jury, sec. 250 121
- Issues of law and fact, how disposed of, sec. 250 121
- Entry of cause on calendar, sec. 251. 121
- Right of party to trial, sec 252 121
- Motion to postpone, sec. 253 121
- Depositions on continuance, sec. 254 121
- Jury, how drawn, sec. 255 122
- Jury sworn, sec. 556. 123
- Challenge of jurors, sec. 257. 123
- Grounds of challenge, sec. 258 123
- Challenge for cause, sec. 259 124
- Order of challenge, sec. 260 124
- Vacancy, how filled, sec. 261 124
- Order of procedure and instructions, sec. 262. 125
- Jury may view property or place, sec. 263 126
- Proceedings if juror sick, sec. 264 126
- Retirement of jury, sec. 265 126
- What papers jury may take, sec. 266. 126
- Disagreement of jury, sec. 267 127
- New trial in such case, sec. 268 127
- Adjournment of court, sec. 269 127
- Verdict, return of and polling jury, sec 270 127
- Same, informal or insufficient, sec. 271 127
- Separation of jury, sec. 272 128
- Verdict, general or special, secs. 274, 275 128
- Assessment of damages, 276, 286 129
- Entry of verdict, sec. 278 129
- Of exceptions, secs. 279-292 129
- Judgment on trial by jury, how entered, sec. 302 138
- Appeal, when may be taken, sec. 421 174
- Same, how tried, sec. 442 179
- In case of joint debtors, sec. 464 184
- Divorce may be private, sec. 545 203
- On charge of contempt, sec. 590 212
- Facts which may be proven, sec. 642 226

PAGE.

TRIAL.
Facts of which courts take notice, sec 643 228
Of mandamus, secs. 571, 572 207
Same, motion for new, sec. 573 208
Testimony previously taken may be used at, when, sec. 691 240
Of forcible entry and detainer, sec. 723 247
Justice may adjourn, secs. 781, 782 262
Justice to enter judgment on, sec. 794 265
Provisions as to district courts apply to justices' courts, sec. 804 269
See Trial New

TRIAL BY COURT.
Parties may waive jury, when, sec. 279 129
Judgment, how entered, sec. 280 130
Findings when to be written and filed, sec. 280 130
Same, how stated, sec. 280 130
When not reversed on appeal, sec. 280 130
Exceptions, what to designate, sec 280 130
Same, when party entitled to, and how settled, sec. 280 130
Same, how filed and served, sec. 280 130
Judgment, how pronounced on written statement of facts, sec. 280 130
Effect of such statement, sec 280 130
As to findings on same, sec. 280 130
Judgment on issue of law, sec. 282 131

TRIAL BY REFEREE
When ordered, secs. 283, 284 131
To whom may be ordered, sec. 285 131
Oath of referee, sec. 285 131
Objections to referee, sec. 286 132
Same, how disposed of, sec. 287 132
Report of referee, sec. 288 132
Same, may be excepted to, sec. 288 132

TRIAL, CRIMINAL, IN PROBATE AND JUSTICES' COURTS.
Of insane persons not to take place, sec. 465 489
Proceedings in case of alleged insanity, secs. 466, 467 490
Of persons recovered from insanity, when to proceed, sec. 468 490
Defendant must be present, sec. 478 494
Allowed counsel, sec. 481 494
Jury may be waived, and how, secs. 487, 488 494
Qualifications of jurors, sec. 489 495
Challenges allowed, sec. 490 495
Duty of court as to questions of law and fact, sec. 491 495
When jury may separate, sec. 492 495
Verdict to be general, sec. 493 495
Same, return and entry of, sec. 494 495
Same in case of joint defendants, secs. 495, 496 495
Jury discharged, and new empanelled, when, sec. 497 495
Jury may fix punishment, sec 498 495
Power of court as to punishment, sec. 498, 499 495
Proceedings, if case beyond jurisdiction, secs. 501-506 495
Court may postpone trial, sec. 502 496
Defendant recognized and committed on failure, secs 502, 503 496
Injured party and witnesses summoned, sec. 505 496
Same, attendance enforced sec. 505 496
Costs of, how paid, sec. 507 496
Judgments for fine and costs, sec. 508 496
Defendant, how discharged, sec. 509 496
Appeal to district court, sec 510 497
Transcript on appeal, sec. 511 497
Witnesses recognized on appeal, sec. 512 497

TRIAL, CRIMINAL, IN PROBATE AND JUSTICES' COURTS.
When heard in district court, sec. 513 497
Witnesses recognized on continuance, sec. 520 498
Penalty for malicious prosecution, sec. 530 499

TRIAL IN CRIMINAL CASE.
Acquittal or conviction a bar to future action, sec. 313 462
Additional instructions to jury sec. 330 464
Adjournment of court while jury out, sec. 333 465
Adjournment of examination, sec. 86 420
Case re-tried if jury disagree, sec. 332 465
Cause continued to obtain evidence, sec. 305 461
Challenges, secs. 278-290 456
Charge to jury, secs. 326, 327 464
Continuance of, secs. 270-274 456
County to subsist jury, sec. 324 464
Court may discharge jury, when, sec. 318 463
Court may order jury to view place, sec. 322 463
Court may reduce punishment, sec. 348 467
Defendant acquitted if reasonable doubt, sec. 308 462
Defendant allowed speedy trial, sec. 9 404
Defendant allowed two days to prepare, sec. 275 456
Defendant discharged if not brought to trial, secs. 303, 304 460
Defendant discharged if no warrant produced, sec 320 463
Defendant in criminal case may take advantage of what defects, sec. 217 443
Defendants jointly indicted, how tried, sec. 302 460
Discharge of jury, sec. 331 465
Duty of clerk in such case, sec 322 463
Duty of juror knowing material fact, sec. 314 462
Effect of granting new, as to jeopardy of defendant, sec. 341 466
Exceptions, secs. 339-341 466
Exceptions, same as in civil cases, sec. 328 464
Existence of corporations, how proven, sec. 298 460
Experts may testify, sec. 300 460
For treason, what evidence admitted, sec. 295 459
Insane person not to be tried, sec. 465 489
In what court offences tried, sec 7 404
In what order set on docket, sec. 274 456
Jury may be polled, sec. 335 465
Jury may be separate, when, sec. 323 464
Jury separating to be admonished, sec. 315 463
Nolle prosequi, when entered, sec. 306 461
Of arrest and examination, secs. 63-116 417
Of impeachments, secs. 42-55 412
Of insanity of person sentenced to death, sec. 380-383 473
Of person alleging insanity at time of judgment, sec, 393 475
Of person alleging insanity when arraigned, sec. 466 490
Same, if found sane, to proceed, sec. 467 490
Of pregnancy, in such case, secs, 384, 385 474
On appeal in supreme court, secs. 402, 403 47

PAGE.

TRIAL IN CRIMINAL CASE.
Order in which conducted, sec. 307.. 461
Penalty for failure to declare dissent, sec. 337 465
Person charged with felony against, must be present, sec. 292.... 459
Place of, for murder or manslaughter, sec. 31.... 506
Proceedings after verdict as to defendant, sec. 337 465
Proceedings if juror become sick, sec. 325.... 464
Proceedings if wrong offence charged sec. 310.... 462
Same, in case of lack of jurisdiction, sec. 310, p. 462, sec. 319.... 463
Jury discharged in such case, sec. 312.... 462
Proceedings prescribed, sec. 293.... 459
Proof necessary to convict of conspiracy, sec. 296.... 459
Same, as to rape, sec. 297.... 460
Provisions for civil actions to apply, secs. 293, 294.... 459
Qualification of juror, sec. 277. 456
Return of verdict, sec. 334.... 465
Sheriff to provide jury room, sec. 329 464
Testimony of accomplice, effect of, sec. 317.... 463
To begin anew if juror not sick, sec. 325.... 464
To retire in charge of office, sec. 316.. 463
Verdict, what to specify, secs. 342, 343.... 466
Same, may assess punishment, when, sec. 344.... 466
What questions considered waived after, in change of venue, sec. 233.. 447
When court may try, sec. 276.... 456
When court to declare punishment, secs. 345-347.... 466
When discharged to become witness, sec. 309.... 462
When must be submitted to jury, sec, 276.... 456
When to be convicted of lowest degree, sec. 308.... 462
Where offences to be tried, secs. 30-36 410
Who shall not serve as jurors, secs. 280-282 457

TRIAL IN JUSTICE'S COURT.
When may be adjourned, secs. 781-784.... 262
Testimony may be taken in such case, sec. 782 262
Plaintiff failing to appear, action dismissed, sec. 785.... 263
To proceed on request of party present, sec. 786.... 263
When jury may be demanded, sec. 787.... 264
Same, deemed waived, sec. 787.... 264
Jury, how summoned, secs. 787-789.. 264
Number of jurors, sec. 788. 264
Jurors may demand fees in advance, sec. 789 264
Challenge of jurors, sec. 790.... 264
Of person alleged father of bastard, sec. 154.... 635

TRIAL IN PROBATE COURT.
Of contest of will, secs. 21, 22.... 280
Same, after probate, sec. 33.... 282
Of issues, sec. 326 354
See Evidence, Testimony.

TRIAL—NEW.
In case of no verdict, sec. 268.... 127
Exceptions on motion for, sec. 293... 134
Defined, sec. 295.... 135
Verdict may be vacated, sec. 296.... 135
Causes for which granted, sec. 296... 135
Application for, sec. 297.... 135
Notice to be given, sec. 298.... 135
Affidavit filed or served, sec. 298... 135
Bill of exceptions, sec. 298.... 135
Motion and statement, sec. 298.... 135

PAGE.

TRIAL—NEW.
When application to be heard, sec. 299. 137
Order staying proceedings, sec. 300... 138
In justice's court, sec. 820.... 271
Affidavit for same, sec. 821.... 272

TRIAL, NEW, IN CRIMINAL CASE.
Defined, sec. 352.... 468
Effect of granting, sec. 353.... 468
When may be granted, sec. 354.... 468
When must be applied for, sec. 355.. 468
Notice of same, sec. 356.... 468

TRUST.
Who may unite in action to declare, sec. 18.... 62
"Trustee of express" defined, sec. 6.. 61
Deeds of. See Chattel Mortgages.

TRUST COMPANY.
Limitation of action for deposits, sec. 46.... 69

TRUST DEPOSIT ASSOCIATIONS.
See Savings Banks.

TRUSTEE.
Of express trust defined, sec. 6 61
May sue without joining beneficiary, sec. 6.... 61
Court may appoint for corporation, sec. 230.... 116
Deposit in court by, sec. 235. 117
Costs of suit by or against, how paid, sec. 505.... 194

TRUSTEES.
See Corporations, Trustees of Schools.

TRUSTEES OF SCHOOLS.
Warrants on county treasurer for school moneys, sec. 1869.... 1177
County superintendent may administer oath to, sec. 1872.... 1178
Powers of, sec. 1879 1180
May administer oath to new members, sec. 1880. 1180
Election and term of office, secs. 1880, 1881. 1180
To pay district clerk's fees, sec. 1886.. 1183
Power as to length of school day, sec. 1895.... 1185
Restrictions as to paying teachers, secs. 1896, 1897.... 1186
Powers as to high schools and special taxes, secs. 1904-1907.... 1188
Same as to school moneys, sec. 1908. 1190
Official oath of, sec. 1912.... 1191
Not to be interested in contracts, sec. 1913 1191
May apply moneys received from road fund, sec. 1943.... 1200
May draw on fund derived from sale of town lots, for what purposes, sec. 1946.... 1200
To order election concerning same, when, sec. 1947.... 1201
Warrant to specify for what purpose drawn, sec. 1947.... 1201

TRUTH.
Defence in libel, sec. 154 541

TUNNEL.
See Mining Tunnel.

UNCLE.
Inheritance by, sec. 534, p. 395, sec. 552 400

UNDER SHERIFF.
To be appointed, sec. 982. 912

UNDERTAKING.
For arrest of defendant, secs. 123, 124. 91
To be filed in court with order of arrest, sec. 134. 93

PAGE.

UNDERTAKING.
- Justification of bail in same, secs. 135-138 ... 93
- In claim and delivery, sec. 159 ... 97
- Discharge of, in such case, sec. 164. ... 99
- Of third party claiming property in replevin, secs. 170, 171 ... 100
- For injunction, sec. 176 ... 101
- In attachment, sec. 182 ... 104
- By defendant in same, sec. 184 ... 105
- Suit on, in attachment, secs. 196, 197. ... 108
- For release of attached property, sec. 199 ... 109
- For release of boat attached, sec. 217. ... 112
- Of receiver, secs. 231, 232. ... 117
- Action upon, if suit dismissed, sec. 242. ... 118
- Of judgment debtor, sec. 351 ... 156
- On appeal, secs 422-430 ... 174
- Conditions of, in such case, secs. 423, 424 ... 174
- Stay of proceedings, secs. 424-428. ... 175
- When in more than one instrument, sec. 429 ... 176
- Proceedings not stayed, when, sec. 431 ... 177
- Surities to make affidavit of worth, sec. 430, p. 176, sec. 540 ... 202
- Copy included in transcript on appeal, sec. 438 ... 178
- On appeal from probate court, secs. 451, 452 ... 182
- Stay of proceedings under, sec. 455. ... 182
- Costs of several actions in one, sec. 496 ... 192
- For costs in civil suit by non-resident, sec. 514 ... 195
- How sheriff may recover on, sec. 533 ... 200
- Of defendant arrested for contempt, sec. 588 ... 212
- Damages on prosecution of same, sec. 594. ... 213
- Of defendant on continuance in forcible detainer, sec. 721, p. 217, sec. 730 ... 249
- In probate court, secs. 80-81 ... 293
- Official of justice of the peace, sec. 229 ... 890

UNDERTAKING IN JUSTICES' COURT.
- Of plaintiff for arrest of defendant, sec. 747 ... 254
- Of defendant for release from arrest, sec. 752 ... 255
- Of plaintiff in attachment, sec. 755 ... 256
- For release of attached property, sec. 756 ... 256
- For replevin, sec. 761 ... 257
- For release of property replevied, sec. 765 ... 258
- Of defendant, on transfer of cause to district court, sec. 779 ... 261
- On appeal, sec. 823 ... 272
- Of party asking adjournment of trial, sec. 784 ... 263

UNITED STATES MARSHAL.
- To assist in canvasssing votes for delegate, sec. 1034 ... 931

UNKNOWN PARTY
- In partition, how summoned, sec. 382 ... 165
- Same, proof of rights of, sec. 384 ... 165

UNLAWFUL ASSEMBLY.
- Defined and punished, secs. 142-144 ... 538

UNLAWFUL INTERFERENCE.
- With contractor, employee, etc., sec. 252 ... 575
- With working of mine or mill, sec. 253 ... 575
- Aiding and abetting, sec. 254 ... 575

UNMARRIED FEMALE.
- Suit for seduction of, sec. 11 ... 61

UNSOUND MIND.
- Person of, cannot be administrator, sec. 45 ... 287

PAGE.

UNWHOLESOME FOOD OR DRINK.
- Punishment for selling, sec. 176 ... 549

USURPATION OF OFFICE OR FRANCHISE.
- Defined and punished, sec. 133 ... 535
- Action for, when, how and by whom brought, sec. 411 ... 171
- What complaint may state, sec. 412 ... 171
- Arrest and bail of defendant, sec. 412 ... 171
- Judgment in such case, sec. 413 ... 172
- Rights of person entitled to office, sec. 415 ... 172
- Rights of parties may be settled, sec. 416 ... 172
- Judgment against defendant found guilty, sec. 417 ... 172
- Fine, in such case, sec. 417 ... 172
- Same, paid to territory, sec. 417 ... 172

VACANCY.
- On jury, how filled, sec. 261 ... 124
- Not to affect judicial proceedings, sec. 525 ... 199
- Deputy county clerk to fill, when, sec. 831 ... 865
- In sheriff's office, under-sheriff or deputy to act, secs. 851-852 ... 872
- In county treasurer's office, deputy to act, sec. 886 ... 879
- In assessor's office, how filled, sec 904 ... 883
- In district, county or township office, how filled, sec. 1040 ... 933
- In board of commissioners for insane, sec. 1222 ... 987
- In territorial offices, secs. 1589, 1590 ... 1081
- In county offices, secs. 1589, 1590 ... 1081
- In office of county surveyor, sec. 902. ... 883
- When appointee to fill, to receive no pay, sec. 1595 ... 1082

VACANCIES.
- In office, how may occur, sec. 1046 ... 935
- Governor may declare, sec. 1047 ... 935
- Filling by governor, sec. 1048 ... 935
- When county commissioners to fill, sec 1049 ... 935
- Persons filling, to qualify, sec. 1050 ... 935

VAGRANTS.
- Defined, sec. 242 ... 572
- Punished, secs. 243, 244-246 ... 573
- Employment of, sec. 245 ... 573

VALIDITY
- Of paper without title, sec. 537 ... 121

VARIANCE.
- Between pleadings and proof, secs. 112, 113 ... 87
- What not deemed, sec. 114 ... 87
- Immaterial in proof, when disregarded, sec. 777 ... 261
- Defendant acquitted on, affect, 223 ... 444

VENIRE.
- For trial jury in probate court, sec. 715 ... 245
- For new jury in unlawful detainer, sec. 725 ... 248
- For new grand jury, sec. 123, p. 428, sec. 141 ... 431
- For jury in case of insane convict, sec. 380 ... 473
- Penalty for neglect to issue, sec. 139. ... 537
- For trial jurors in district court sec. 1298 ... 1007
- Same, return of, sec. 1299 ... 1007
- Special, for same, sec. 1301 ... 1008
- For grand jury, sec. 1302 ... 1008
- For special grand jury, sec. 1303 ... 1008

VENUE—IN CIVIL ACTION.
- Change of, when allowed, secs. 60, 61. ... 72
- Same, causes for, sec. 62, 63 ... 72
- If judge or justice disqualified, sec. 63 ... 73

PAGE.

VENUE—IN CIVIL ACTION.
  Costs of proceedings in case of change, sec. 64...... 73
  In justice's court, when changed, sec. 748, p. 255, sec. 780.................... 262

VENUE—IN CRIMINAL CASE.
  In courts of concurrent jurisdiction, sec. 7........................ 404
  Change of, secs. 226-236.. 445
  Of offences, secs. 30-36................ 409
  Petition for change, sec. 226 445
  Removal of defendant, in case of change, sec. 227.... 445
  Change only after indictment, sec 227........................... 445
  Causes for which territory may have change, sec. 228 446
  Affidavit for same, sec. 229..........., 446
  When granted after first term, sec. 230...................................... 446
  Proceedings, when granted, sec. 231.. 446
  Conviction, costs, charges, sec 232... 446
  Irregularities waived, after verdict, sec. 233............................. .. 447
  Order of removal deemed notice, sec. 234............ 447
  Punishment of clerk for neglect, sec. 235....... 447
  Where there are several defendants, sec. 236 447
  Change because of jurisdiction, sec. 311................ 462

VERDICT IN CIVIL ACTION.
  If none, action re-tried, when, sec. 268...................................... 127
  When to be sealed, sec. 269.......... 127
  To be in writing and how received, sec. 270............ 127
  Insufficient or informal corrected, sec. 271................................ 127
  General or special, secs. 274, 275...... 128
  When jury to find amount, sec. 276.. 129
  Clerk to record, sec. 278............... 129
  May be excepted to, sec. 290.......... 133
  When may be vacated, sec. 296....... 135
  Judgment to conform to, sec. 302..... 138
  Included in judgment roll, sec. 306.. 139
  Court open on non-judicial day to receive, sec. 531...................... 199
  Certified copy transmitted in case of mandamus, sec. 524.................. 208
  In forcible entry and detainer, sec. 724...... 248
  In justice's court, sec. 794............ 265
  In case of contest of probate of will, sec. 22........ 281
  Of jury in probate court, sec. 327...... 355
  Of coroner's jury, sec. 874.. 876
  Of jury to examine dam or reservoir, sec. 986................ 913

VERDICT IN CRIMINAL CASE.
  Return, filing and record of, sec. 334. 465
  Jury may be polled, sec. 335... ...., 465
  Duty of juror when polled, sec. 335... 465
  Procedure when "guilty" or "not guilty," sec. 337..... 465
  To specify degree of offence, sec. 342.. 466
  And find value of property taken, sec. 343............................. .. 466
  May assess punishment, sec. 344..... 466
  In probate and justice's courts, sec. 493-498..... 495
  To designate degree of murder, sec. 21 505
  Exceptions, sec. 24...................... 505
  Influenced by corrupt means, sec. 131 535

VERIFICATION.
  Of pleadings, sec. 96...................... 84

VETERINARY SURGEON.
  Appointment and duties of, secs. 47, 48.. 599
  Salary and qualifications of, sec. 57.. 605
  Deputy surgeons, sec. 62....... 607

PAGE.

VILLAGE.
  See Municipal Corporations.
  See Towns, Cities and Plats.

VIOLENCE.
  When homicide justified by, sec. 32.. 506
  In case of assault, sec. 58............ 511
  When robbery, sec. 77..... 516
  Unlawful acts of punished, sec. 145.. 539

VOLUNTARY MANSLAUGHTER.
  Defined, sec. 27........................ 506

VOTES.
  Illegal at election to change seat of government, sec. 230................ 566
  Purchase and sale of, secs. 1065-1068.. 939
  Purchase forbidden, sec. 1065......... 939
  Sale forbidden, sec. 1066............... 939
  Purchase of nomination or election prohibited, sec. 1067................. 939
  Oath prescribed for person elected, sec. 1067... 939
  Same, by whom administered, sec. 1067 939
  Penalty for refusing to take oath, sec. 1069.............. 941
  Penalty for violating act, sec. 1068... 941
  Duty of district attorney, sec. 1070... 941

  See Elections.

WAGER.
  At unlawful games prohibited, sec. 208....... 558

WAGE WORKERS.
  Wages of employees, preferred claims in case of assignment, sec. 2050..... 1230
  Priority of claim of employee against estate of deceased person, sec. 2051 1230
  Execution, attachment, etc., subject to lien of employee, sec. 2052. . . 1230
  Proceedings if claim of employee disputed, sec. 2053................. 1231
  What lien not affected, sec. 2054...... 1232

WAIVER.
  Of summons by defendant, sec. 67... 74
  Of trial by jury, sec. 279............. 129
  Of examination for offence, sec. 111 424
  Of challenge to grand jury, sec. 122 428
  Of jury in probate and justice's courts, sec. 488.. 494

WARD.
  Guardian may sue for seduction of, sec. 12...................... 61
  Suit for injury or death of, sec. 13.... 62
  Debts of, how paid, sec. 367........... 366
  Guardian must represent, sec. 368... 366
  And settle accounts of, sec. 368....... 366
  Waste prohibited sec. 369... 366
  Income, how applied, sec. 369. . .. 366
  Guardian may sell real estate, when, sec. 369............ 366
  Definition of, sec. 410.................. 376
  Marriage of, suspends powers of guardian, sec. 428.................... 378
  Settlement with guardian, sec. 429.. 378
  Of unsound mind may be placed in asylum, sec. 431...... 378

  See Guardian.

WARRANT.
  For attachment of boat, secs. 212, 213. 112
  To arrest for contempt, sec. 586....... 211
  Duty of sheriff executing, sec. 587.... 212
  For witnesses failing to attend, secs. 663, 664 233
  For commitment of administrator or executor, sec. 131 304
  For share of non-resident distributee of estate, sec. 311...................... 351
  Destroying or defacing, punished, sec. 90 521

PAGE.

WARRANT.
Under habeas corpus act, for person in custody, secs. 1193-1198 979
For money apportioned to school district, sec. 1869 1177
On school fund for building school house, sec. 1946...................... 1200
See Execution, Summons.

WARRANT IN CRIMINAL CASE.
Against person threatening offence, secs. 22-24 408
Arrest of offender may be made under, sec. 64 417
When person having must state authority, sec. 65.................. 417
When officer may arrest without, sec. 66.................. 417
Must state official character, sec. 68.. 418
Magistrate may proceed without, when, sec. 70........... 418
When to issue for offence committed, sec. 77.................. 419
Power of officer having in another county, sec. 78........ 419
Bail to be endorsed on, sec. 81, p. 420, sec. 159 433
Same, return of, sec. 82 420
Person arrested under, brought before magistrate, sec. 85...... 420
When to issue on indictment, sec. 158.................. 433
When defendant discharged, if none produced, sec. 320. 463
For arrest of defendant to receive sentence, sec. 365........ 471
For commitment of criminal, secs. 372, 373 472
On sentence of death, sec. 375. 472
In case of insane criminal, sec. 383... 473
In case of pregnancy of female criminal, sec. 386 474
For arrest of person sentenced to death, sec. 387........ 474
For unexecuted sentence of death, sec. 388...................... 474
For search, secs. 432-444. 485
When valid without seal, sec. 444 .. 486
For fugitive from justice, sec. 449..... 487
By probate judge or justice, for arrest, sec. 477........................ 494
Penalty for counterfeiting, sec. 96.... 523
Unlawfully affixing seal to, sec. 106.. 526
For transfer of insane convict, sec. 312..... 673
Of coroner for person charged, etc., secs. 876-879............ 877
Auditor to issue for expense of transporting prisoners, sec. 1077 945
See Search Warrant.

WARRANTS, TERRITORIAL.
To issue for reward offered for arrest of criminal, sec. 275.................. 664
Insurance, record and report of, secs. 117, 118.......................... 625
None to be issued without express authority, sec. 117, p. 625, sec. 1130.. 961
Register of, sec. 129...... 628
Falling due, published, and interest to cease, sec. 130........ .. 628
For expense of publishing brands and marks, sec. 186................. 643
For expenses of convicts, sec. 298 . 669
For education of deaf, mute or blind child, sec 995.............. 917
Territorial auditor to issue, sec. 1122. 960
Provisions for payment of, sec. 1123. 960
In what sums issued, sec. 1124 960
Form of, sec. 1125................ 960
Proportion payable in taxes and licenses, sec. 1126 960
Penalty for purchase by sheriff or collector, sec. 1127. 961
Issue prohibited, when, sec. 1128. .. 961
Rate of interest on, sec. 1129..... 961
When auditor forbidden to issue, sec. 1130.............................. 961

PAGE.

WARRANTS, TERRITORIAL.
Penalty for illegal issue, sec. 1131.... 961
Duplicates, when and how issued, sec. 1132.......................... 961
Certain officers not to deal in, secs. 1579, 1580 1079
When not to be redeemed, sec. 1581.. 1079
To contractor for territorial printing, sec. 1636......................... 1094
For copies of supreme court reports, sec. 1993...... 1214

WARRANTS, COUNTY.
Registered, paid out of contingent fund, sec. 783...... 852
How issued, sec. 763 846
Cancellation of, sec. 767............... 847
To be signed by clerk, when, sec. 772. 848
Not to issue for balance of warrant paid for taxes, sec. 784........... 852
Penalty for delivering to person not entitled, sec. 841.................. 868
County clerk to issue, sec. 974.... 909
Order in which paid, sec. 893, p. 881, sec. 791 855
In whose name registered, sec. 894 . 881
Receivable for taxes, sec. 1126.... . 960
Registry of, when presented for payment, sec. 791... 855
Payment of, after posting, sec. 793... 855
Interest, after presentation, sec. 794.. 855
Certain officers not to buy or deal in, secs. 1579, 1580 ... 1079
County treasurer to pay, sec. 1867 .. 1176

WARRANTY.
Lineal and collateral, abolished, sec. 284........ 665

WASHINGTON'S BIRTHDAY.
Judicial business prohibited, sec. 531. 199

WASTE.
Limitation of action for, sec. 42...... 69
Court may restrain, when, sec. 346... 153
What not deemed to be, sec. 346...... 153
Action for, allowed, sec 362......... 159
Who liable for, sec. 362...... 159
By executor or administrator, secs. 113-117. 299
Same, letters revoked for, sec. 258... 339
By guardian, not permitted, sec. 422. 377

WATER.
Action for offence committed on, where tried, sec. 57....... 71
Poisoning of, sec. 63 512
Polluting, sec. 162 546
Act regulating sale of, secs. 1263-1266. 998
Penalty for unlawfully diverting, sec. 171 548
Penalty for presenting unlawfully diversions, sec. 175......... 548
See Corporations, Irrigation, Water-Rights.

WATER COURSES.
Obstructing punished, sec. 162...... . 546

WATER WORKS.
Penalty for injuring, sec. 240..... 571

WAXED CARDS.
Playing with, prohibited, sec. 210 .. 559

WEAPON.
Fighting duel with, secs. 22, 23....... 505
Challenge to fight with, sec. 43....... 509
Assault with deadly, sec. 60 512
Having same in possession, sec. 62.. 512
Drawing or exhibiting, sec. 65 512
Same, by officer, sec. 65................ 512
Conveying to convict, sec. 124........ 533
Fighting with, to be prevented, sec. 153........... 541
Carrying, with intent to assault, sec. 174.............................. 549

PAGE.

WEIGHTS AND MEASURES.
- False, using or selling by, punished, sec. 201 576
- Same, for gold dust, sec. 204 557
- Lawful standard established, sec. 2056 1232
- Weight of ton, sec. 2057 1232
- Of bushel, sec. 2058 1232
- County officers to provide standard, sec. 2059 1233
- Duties of vendors and traders to, sec. 2060 1233
- Inspector, appointments, bond and duties of, secs. 2061-2063 1233
- Fees, how regulated, sec. 2062 1233
- Penalty for using other than standard, sec. 2064 1233
- Duty of inspector on violation, sec. 2065 1234
- Fines to go to county, sec. 2066 1234

WIDOW.
- Right to homestead, sec. 318, p. 353; sec. 140 307
- Provisions for support of, sec. 133-139 305
- Order making allowance to, may be appealed from, sec. 324 354
- Legacies to, when bear interest, sec. 521 393
- Inheritance by, sec. 534 395

WIFE.
- May defend suits in her own right, sec. 8 61
- Not to testify against husband, exceptions, sec. 650 230
- Marriage of, when will revoked by, secs. 459, 460 384
- May be administratrix, sec. 60 290
- Inheritance by, sec. 534 385
- When not guilty of crime, sec. 6 501
- When husband punished for crime, sec. 7 501
- Marriage of, how proved in bigamy, sec. 155 543
- Unmarried man marrying, sec. 156 543
- When need not join in conveyance, sec. 287 666
- Real estate of, how conveyed, sec. 236 656

See Married Woman.

WELL.
- Poisoning of, punished, sec. 63 512

WILL.
- Appeal from order admitting to probate allowed, sec. 445 181
- Judge to fix day for hearing, sec. 13 278
- Probate of, if lost or destroyed, secs. 37-40 283
- Probate of, nuncupative, secs. 41-43 284
- Separate authority of executors, sec. 50 288
- Found after administration, letters revoked, sec. 102 297
- Debts and expenses paid according to, sec. 208 328
- Authority of executor to sell under, sec. 209 328
- Estate not devised by, first liable for deaths, sec. 219 328
- Devisees and legatees to contribute to pay debts, sec. 212 328
- Appeal to district court, sec. 324 354
- Guardian may be appointed by, sec. 414 376
- Powers of probate court in regard to, sec. 707 244

WILLS.
- Probate court to receive proof of, sec. 1 274
- Seal affixed to proof of, sec. 5 275
- Where proved and letters granted, secs. 6, 7 276
- Duty of custodian, secs. 8, 9 277
- Petition for probate, secs. 9, 10 278
- In possession of third party, to be produced, sec. 12 278
- Penalty for failure, sec. 12 278

PAGE.

WILLS.
- Notice of hearing petition for probate, sec. 13 278
- Same, on whom served, sec. 14 274
- Power of judge as to probate, sec. 15 279
- Proof of service of, notice, sec. 16 279
- Who may contest, and how, sec. 17 279
- When probated, sec. 18 280
- Olographic, sec. 19 280

Contest of Probate
- Proceedings to contest, sec. 20 280
- If jury demanded, how trial conducted, sec. 21 280
- Verdict of jury, sec. 22 281
- Testimony, how perpetuated, sec. 22 281
- Examination of witnesses, secs. 23, 24 281
- Certificate of proof attached thereto, sec. 25 281
- Will, certificate and testimony to be recorded, sec. 26 281
- Probate of foreign, secs. 27-29 281

Contest of, after Probate.
- Limitation of, secs. 30-36 282
- Process to contest, sec. 31 282
- Issues of fact, how tried, sec. 32 282
- When probate revoked, sec. 33 282
- When power of executor revoked, sec. 34 283
- Cost of contest, to whom taxed, sec. 35 283
- Lost or destroyed will, how probated, secs. 37, 38 283
- Same certification and record of, sec. 39 283
- Same when executors restrained, sec. 40 284
- Nuncupative, how proven, secs. 41-43 284
- Same, contest of, sec. 43 284
- Probate of, when judge disqualified, secs. 109-112 298
- To be followed as to payment of debts, etc., sec. 208 328
- Not directing sufficient property to be sold, sec. 210 328

Execution and Revocation.
- Who may make, and what devised, secs. 432-436 380
- Who incapable of making, sec. 433 380
- When declared void, sec. 434 380
- Powers of married women, sec. 435 380
- What may dispose of, sec. 436 381
- Who may take under, sec. 437 381
- Corporations prohibited, sec 437 381
- How to be made and attested, secs. 438-442 381
- Olographic, sec. 439 381
- Subscribing witnesses to, secs. 440-442 381
- Conjoint, or mutual, sec. 441 381
- Effect of subsequent incompetency of witnesses, sec. 442 381
- Conditional denied probate, when, sec. 443 382
- When devised to subscribing witnesses, void, sec. 444 382
- Agreement to sell property, not to revoke, sec. 461 384
- Cordial, effect of, sec. 448 382
- Effect of marriage, and birth of child, secs. 458, 459 384
- Estate in lands devised, sec. 471 386
- Incumbrance upon property, sec. 462 384
- Interest acquired after making, sec. 472 386
- Nuncupative, need not be attested, sec. 450 382
- Same, requisites of, sec. 450 382
- Same, when received and probated, secs. 451, 452 383
- Not revoked by subsequent conveyance, sec. 469 385
- Of advancements, sec. 469 385
- Of devises to corporations, charities, etc., sec. 473 386

PAGE.

WILLS.
Proof of cancellation or destruction, sec. 454 383
Revocation by subsequent will, sec. 456 383
Revocation by marriage of woman, sec. 460 384
Revocation or alteration of, sec. 453. 383
Revocation of, if made in duplicate, sec. 455 383
Share assigned same, sec. 468 385
Share of child born after making, sec. 466 385
Share of child omitted in, sec. 467 385
Validity of, and how governed, when made out of territory, secs. 446, 447. 382
When cancellation revives prior will, sec. 457 384
When descendants take estate, sec. 470 385
When instrument operates as revocation, secs. 464, 465 385
When share saved to same, sec. 445 382

Interpretation, etc.

Ambiquities, how explained, sec. 480. 388
As to surveyorship, sec. 493 389
Advancements or gifts, sec. 508 390
Construed as a whole, sec. 478 388
Conditional disposition, sec. 502 390
Construction of, sec. 474 387
Correction of mistake or omission, sec. 497 390
Condition, precedent defined, sec. 503 390
Same, when performed, sec. 505 390
Distinct devise, not affected by other parts, sec. 497 388
Effect of death of legatee, secs. 500, 501 390
In case of uncertainty, sec. 475 388
Interest passes by devise, sec. 486 388
Owners in common, of legacy, sec. 507 390
Posthumous child, when to take, sec. 496 389
Real and personal, when passes, sec. 487 389
Rules for same, sec. 476 388
Rule of more than one mode, sec. 483. 388
Testamentary disposition, when to vest, sec. 498 390
Same, how divested, sec. 499 390
Technical words, how taken, secs. 484, 485 388
When all property passes, sec. 488 389
When devise of residue passes entire estate, sec. 489 389
Words descriptive of class, sec. 494 389
When disposition upon condition vests, sec. 504 390
Words of, how taken and interpreted, secs. 481, 482 388
When real property deemed personal, sec. 495 389
What vests by words of donation, secs. 491, 492 389

General Provisions.
Annuity defined, sec. 509 391
Abatement between legacies, sec. 514. 393
Bequests and legacies, how controlled, sec. 522 393
Bequest of income to accrue, sec. 518. 393
Executor not to appoint executor, sec. 524 394
Forgery of, punishment, sec. 96 523

See Married Woman.

How interpreted, sec. 529 394
How specific legacy for life transmitted, sec. 517 393
Interest on legacies, sec. 521 393
Intention of testator as to executor or administrator, sec. 523 393
Legacies and annuities, when due, sec. 520 393

PAGE.

WILLS.
Legacies, how distinguished, sec. 509. 391
Liability of all property for debts, sec. 511 392
Legacy or gift, when may be satisfied before death, sec. 519 393
Liability of person taking under, sec. 530 393
Order in which property taken to pay debts and legacies, secs. 511, 512 392
Provisions as to revocation of, sec. 526 394
Provisions before this act takes effect, sec. 527 394
Property governed by laws of territory, sec. 528 394
Title by specific devise, sec. 515 393
When legacies to kindred chargeable, sec. 513 392
When power of executor begins, sec. 525 394
When right of purchase impaired, sec. 516 393

See Married Woman.

WINE.
Sale of, near camp meeting, sec. 152. 541
To Indians or half-breeds, sec. 166 544
Adulteration of, sec. 177 549
Sale of, to soldiers, secs. 188-190. 552
Obtained by soldier deceitfully, secs. 189, 190 552

See Local Option.

WOOD.
Burning of, sec. 71 514
Maliciously injuring or destroying, sec. 218 561
Setting fire to, secs. 221, 222 562

WITNESS.
Penalty for disobeying order as to judgment debtors, sec. 357 157
Affidavit of attendance, sec. 511 195
Contempt of court by, sec. 584 210
Persons disqualified, sec. 649 230
Cases when not allowed to testify, secs. 650, 651 230
Communication to public officer, sec. 651 230
Judge or juror may testify, sec. 652 230
Husband and wife not to be, when, sec. 650 230
Attorney or counsel, same, sec. 650 230
Clergyman or priest, same, sec. 650 230
Physician or surgeon, same, sec. 650 230
Use of interpreter, sec. 653 231
Subpœna, what may require, sec. 654 231
Issuance of subpœna, sec. 655 232
Service of same, sec. 656 232
May demand fees in advance, sec. 656 232
Manner of service, sec. 657 232
Service of person in court, sec. 658 232
Duty of, when served, sec. 659 233
Duty of, to attend and testify, sec. 660 233
Punishment for contempt, sec. 661 233
Only heard on oath or affirmation, sec. 618 223
Presumed to speak the truth, sec. 619 223
Liability to injure party, sec. 662 233
Warrant for arrest of, sec. 663 233
Examination of prisoner as, secs. 665, 666 233
Production of, when prisoner, sec. 667 234
Examination of adverse party, secs. 668-671 234
On affidavit, secs. 672-676 235
Deposition of, secs. 678-685 236
Affirmation of, sec. 695 241
Probate court may compel attendance of, sec. 707 244

Page.
WITNESS.
Penalty for default, in forcible entry and detainer, sec. 729 249
One sufficient to prove will, when, sec. 18 280
To will, testimony of, secs. 23. 24 281
To will, secs. 438-442 381
To conveyance of realty, may be subpœnaed, sec. 251. 660
Penalty for neglect, sec. 252 660
To mark for signature, sec. 1970 1207

See Evidence, Testimony, Trial.

WITNESSES IN CIVIL ACTION.
May be excluded from court until called, sec. 273 128
As to property of judgment debtor, sec. 354 157
May be examined on investigation of charge of contempt, sec. 590 212
When one sufficient to prove the fact, sec. 616 223
What facts may testify to, sec. 617 223
Who may be, sec. 647 229
Persons prohibited from testifying, secs. 648-650 229
What subpœna may require, secs 654, 655 231
In forcible entry and detainer, sec. 722 247
Testimony of, on continuance in justice's court, sec. 782 262
In suits affecting counties, sec 750 843

WITNESSES.
Required to attend inquisition of insanity of ward, sec. 366 365
County commissioners may examine, sec. 777. 850
Coroner may issue subpœna for, sec. 871 876
Oath of, at coroner's inquest, sec. 872. 876
Notary public may compel attendance of, sec. 1577 1078

WITNESSES IN CRIMINAL CASE.
Rights of defendant as to, sec. 9 404
Against one's self, sec. 11 405
To be examined on complaint of threatened offence, sec. 21 407
When prosecuting to pay costs, secs. 27, 28 408
Complainant to give names of, sec. 79 419
To be subpœnaed for examination of offenders, sec. 79 419
Examined in defendant's presence, sec. 92 422
To be recognized, secs. 99, 100 423
Married woman or minor, recognizance of, sec. 101 423
When committed, sec. 102 423
Fees in such case, sec. 102 423
For defendants, when excluded, sec. 109. 424
From other county may be compelled to attend, sec. 431 483
When either party may have excluded, sec. 113. 425
Before grand jury, how attendance procured, secs. 136, 137 430
Same, contempt of, secs. 137-140 430
Names indorsed on indictment, sec. 157 433
On change of venue, sec. 231 446
Notice of same, sec. 234 447
Injured person competent, sec. 299 460
Experts, sec. 300 460
Against person for gaming, sec. 301 460
In case of insane convict, sec. 381 473
Affidavit for fees, sec. 423 481
Chapter concerning, secs. 424-430. 482
Service of, sec. 424 482
Disobedience, penalty, sec. 425 482
Attendance in any county required, sec. 426 482

Page.
WITNESSES IN CRIMINAL CARE.
Person indicted or prosecuted may have compulsory process for, sec. 427 482
Cannot demand fees, sec. 428 482
When subpœnaed, sec. 416 480
When to attend, sec. 417 480
Attendance in probate or justice's court may be enforced, sec. 505 496
Recognized on appeal from probate or justice's court, sec. 512 472
Notice of continuance, sec. 520 498
Injured party or accomplice competent, sec. 14 502
Defendant as, sec. 15 502
Affirmation of, sec. 16 503
Persons present at a duel, sec. 17 503

See Grand Jury, Wills.

WITNESS FEES.
Unclaimed, to be paid to county, sec. 1103 954
Officer give notice of payments, etc., secs. 1104-1106 954
Same, kept one year and transferred to county fund, secs. 1104, 1105 954
Same, penalty for failure to pay over, sec. 1108 954

WORDS.
Used in civil practice act, how construed, sec. 539 201
Of will, to be taken in ordinary sense, sec. 481 388
Persons. what to include, sec. 456. 488
Definition of, in civil practice act, adopted in, sec. 457 488
And phrases, how construed, sec. 202 647
Grant, bargain and sell, construed, sec. 285 665

WORK HOUSE.
See Poor.

WOUNDING.
In duel, sec. 23 505
Of domestic animal, sec. 215 560
Jurisdiction of court in cases of, sec. 36 283

WOMAN.
Effect of marriage on will, sec. 460 384
Concealing death of child, sec. 41 508
Kidnapping, defined and punished, secs. 51, 52 510
Compelling to marry, etc., punished, sec. 55 511
See Wife, Married Woman, Widow.

WOOLEN FACTORIES.
First erected exempt from taxation, sec. 2067 1234
Term defined, sec. 2068 1234
Notice of intention to erect, sec. 2069. 1234
Reference to first notice, sec. 2070 1235

WRIT.
Return of, in attachment, sec. 203 109
Of execution, how issued in, what to require, sec. 313 142
Of execution, how enforced, sec. 331 148
Scire facias and quo warranto abolished, sec. 410 171
Of certiorari, secs. 554-564 205
Of mandamus, secs. 565-578 206
Powdrs of district court to issue, sec. 702 243

WRIT OF CERTIORARI.
Defined, sec. 554 205
When, how and by whom granted, secs. 555-556 205
Application for, sec. 556 205
How directed, sec 557 205
What to command, sec. 558 205
Order to stay proceedings, sec. 539 205
How served, sec. 560 205
Review of, sec. 561 205

PAGE.
WRIT OF CERTIORARI
  Return of, sec. 562.................... 206
  Copy of judgment to inferior court, sec. 563.. 206
  Judgment roll and appeal, sec. 564. 206
    See Pleading, District Court.

WRIT OF HABEAS CORPUS.
    See Habeas Corpus.

WRIT OF INJUNCTION, sec. 172..... 100

WRIT OF ATTACHMENT, sec. 184.. 105
  How executed, secs. 185, 186. 105
  From justice's court, secs. 754-757 .. 256

WRIT OF GARNISHMENT, secs. 188-190 106

WRIT OF MANDAMUS.
  Defined, secs. 565-568. 206
  Authority to grant, sec 566. 206
  Cases where granted, sec. 567.... .. 207
  Nature of writ, sec. 568..... 207
  Application without notice, sec. 569 . 207
  The defence, sec. 576.... 207
  Trial by jury, sec 571... 207
  The answer, sec. 572..... 208
  Motion for new trial, sec 573.......... 208
  Transmitting verdict to clerk, sec. 574 208
  The hearing, sec. 575... 208
  Of the judgment, sec. 576..... 208
  Service of, sec 577 208
  Disobedience of, penalty, sec. 578. :... 208

WRIT OF POSSESSION.
  Of real estate, when to issue, sec. 17 . 62

WRIT OF PROHIBITION.
  Definition of, sec. 579.. 209
  Authority to grant, sec. 580 ,...... 209
  Form of, sec. 581 209
  Provisions as to mandamus apply to, sec 582........ 209
  Return of, sec. 583 209
    See Summons, Warrant.

WRITS.
  Sheriff, under-sheriff, or deputy, to serve, sec. 855 873

WRITING.
  Alteration of, how to be accounted for, sec. 644 228

PAGE.
WRITING.
  Promise, etc., to renew or continue contract, to be in, sec. 53...... 70
  Notices under code of civil procedure, to be in, sec. 487 189
  To include printing, or printed paper, sec 539....... 201
  Petition for letters of administration, to be in, sec 61. 290
  Necessary to charge administrator or executor, on special Promise, sec 247 337
  Conveyances, etc., of lands, to be in, sec. 217.......... 651

WRITINGS.
  Proof of contents, sec. 627....... 224
  Construction of, sec. 628............... 224
  Interpretation of, sec. 629............. 225
  Office of judge construing, sec. 630... 225
  As to the intention, sec. 631 225
  Circumstances of making, sec. 632... 225
  Presumption in, concerning, sec. 633........... 225
  When to control printing, sec. 634 .. 225
  Testimony of experts, sec. 635 225
  Intention of parties, sec. 636.... 226
  Construed in ordinary sense, sec. 637....... 226
    See Evidence, Trial.

WRITTEN INSTRUMENTS.
  Alteration, how to be accounted for, sec. 644........ 228
  Limitation of action upon, sec. 41.... 68
  When admitted genuine, sec. 97. . . 84
  Denial of genuineness, sec. 98........ 84
  Right of party to inspect, sec. 99..... 85
  Notice, how construed, sec. 637..... . 226
    See Evidence, Trial.

WRONGS—PRIVATE.
  Redress, or prevention of, sec. 1...... 59

YEAR.
  In homicide, how computed, sec. 30. 506
  Fiscal year, for territorial purposes, sec. 140 630
  What construed to mean, sec. 202.... 647
  School year defined, sec. 1919 1192

YELLOWSTONE COUNTY.
    See County, Boundaries.
  Restriction upon indebtedness of, sec. 1 1242